



Scrutiny Panel - Communities

To All Members of the Communities Scrutiny Panel on Wednesday, 07 December 2022

Date of meeting: Thursday, 15 December 2022

Time: 18:30

**Venue: The Council Chamber
The Symington Building, Adam and Eve Street, LE16 7AG**

Members of the public can access a live broadcast of the meeting from the [Council website](#), and the meeting webpage. The meeting will also be open to the public.

Agenda

- 1 Apologies for Absence and Notification of Substitutes.
- 2 Declarations of Members' Interests
- 3 Draft Communities Scrutiny Panel minutes - 13 October 2022 3 - 8
- 4 Scrutiny Review 9 - 32
- 5 Development Management Services Update 33 - 70
- 6 **Any Urgent Business**
To be decided by the Chairman.

LIZ ELLIOTT
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And all other Councillors for information

HARBOROUGH DISTRICT COUNCIL
MINUTES OF THE MEETING OF THE COMMUNITIES SCRUTINY PANEL

held at

The Council Chamber
Symington Building, Adam & Eve Street, Market Harborough, LE16 7AG

on 13th October 2022

Commencing at 6.30pm.

Present:

Councillor Nunn, Chairman

Councillors: Bilbie, Mrs Ackerley, James, Hollick, Johnson, Mrs Robinson, Mrs Page
(ex officio)

Apologies: Councillor Mrs Simpson (Substituted by Councillor Whitmore)

Officers: T. Nelson, D. Atkinson, S. Baldwin, C. Pattinson (remote)

Guest: Councillors King & Bateman

Guest remote: Mr D Campbell-Kelly

1. APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTIONS

Apologies were received from Councillor Mrs Simpson who was substituted by Councillor Whitmore.

2. DECLARATIONS OF MEMBERS' INTERESTS

There were none.

3. MINUTES

RESOLVED that the Minutes of the Meeting of the Communities Scrutiny Panel held on the 1st September 2022 be signed by the Chairman as a true record.

4. LEICESTER AND LEICESTERSHIRE STATEMENT OF COMMON GROUND RELATING TO HOUSING AND EMPLOYMENT NEEDS

The Strategic and Local Planning Manager presented the report to the Panel with a recommendation to review and comment on the Statement of Common Ground (“the Statement”) prior to a recommendation to Cabinet and a decision at Council in late January 2023. She explained that the Statement addresses the issue of unmet housing and employment needs across Leicestershire. It flows from the previous statement dated June 2021. She explained that signing the statement will help demonstrate that the Council has met its ‘Duty to Cooperate’ which is an essential pre-requisite to adopting a new local plan for the district.

The Panel was directed to key evidence studies which relate to the apportionment of housing need across Leicestershire:

- A: Leicester and Leicestershire Statement of Common Ground relating to housing and employment needs, June 2022
- B: Leicester and Leicestershire Housing and Economic Needs Assessment, June 2022
- C: Leicester and Leicestershire Housing and Economic Needs Assessment: Executive Summary, June 2022
- D: Leicester and Leicestershire Housing and Economic Needs Assessment: Housing Distribution Paper, June 2022
- E: Leicester and Leicestershire Housing and Economic Needs Assessment: Employment Distribution Paper, June 2022
- F: Leicester and Leicestershire Statement of Common Ground: Sustainability Appraisal Report, June 2022
- G: Leicester and Leicestershire Statement of Common Ground: Sustainability Appraisal: Non-Technical Summary, June 2022
- H: Leicester and Leicestershire Statement of Common Ground relating to housing and employment needs FAQs, June 2022
- The previous Statement of Common Ground referenced the Strategic Transport Assessment & Strategic Growth Opportunities and Constraints Study – these look to guide strategic planning in 2050 and are not currently available.

The Chair thanked the Strategic and Local Planning Manager for her introduction and explanation of the report and invited the Director, Planning and Regeneration to speak.

The Director, Planning and Regeneration, explained the context of the Statement. He emphasised the importance of signing the Statement in developing the next Local Plan, highlighting the difficulty in proving that the Council had met the ‘Duty to Cooperate’ if it was not signed, putting the Local Plan at risk.

The Chair invited Councillor King, as Portfolio Holder for Strategy, to address the Panel on the Statement.

Councillor King reinforced the importance of demonstrating the Council is meeting its ‘Duty to Cooperate’. He welcomed the Panel’s opportunity to scrutinise the Statement before it is put to Cabinet and Council.

The Chair presented a supplementary question to the panel from Mr Campbell-Kelly.

Question:

“There was no mention at the time of the approval of the 2021 SoGC that the missing evidence was not needed for the unmet need allocation. What has changed?”

The Strategic and Local Planning Manager answered as follows:

“The 2021 Statement of Common Ground sets out the HENA (Housing Economic Needs Assessment) and the Sustainability Appraisal which cover the unmet housing and employment distribution up until 2036, The Strategic Transport Assessment and The Strategic Growth Opportunities and Constraints Mapping cover the period from 2031 to 2051.

At the time we prepared the Statement of Common Ground, we were of the view that all those studies would be complete and would be relevant to inform the Statement of Common Ground. As work continued it became clear that the Strategic Transport Assessment and the Strategic Growth Opportunities and Constraints would not be available but are also less pertinent to the current issue at hand because of the timescales. There is a very long lead-in period on strategic sites and strategic transport infrastructure, so these studies relate to the period during the 2030’s and 2040’s. Therefore, those studies have little impact on the issue we are currently looking at, which is how we are going to deal with this unmet need that occurs during the period to 2036.

Although it was originally envisaged that the four would come together as a package, it has become clear that the bigger, longer-term projects have taken longer to deliver, but their significance and relevance is considerably less. For this reason, we were able to proceed with the completion of the HENA, the completion of the Employment Distribution paper, the Housing Distribution paper and the Sustainability Appraisal of the unmet need to 2036 and it is that suite of evidence that has informed the current statement of common ground and those longer-term studies will inform a later consideration of strategic planning to come.”

The Chair thanked the Strategic and Local Planning Manager for her answer and invited the Panel to consider the Ideas for Points for Discussion on page 12 of the report. She advised the Panel that any views and opinions would be passed to Cabinet.

The Panel had the opportunity to ask questions of officers and the portfolio holder in respect of the report. It discussed the proposed distribution of unmet housing needs between different authorities and expressed concern on information it felt was missing. It noted in particular that most other authorities in Leicester and Leicestershire have signed the statement. The Panel expressed concern about the availability of information about Leicester City Council’s housing capacity but recognised that there would be other problems to address should the Council not sign the Statement. Some

members of the Panel recalled the experience of being without a local plan in previous years, and did not want to see this position repeated.

The Director, Planning and Regeneration and the Strategic and Local Planning Manager responded to queries from the Panel, commenting that while other authorities may appear to have land that could be developed, this could be impacted by a lack of effective infrastructure available to make it possible. Officers assured the Panel that the work done by Leicester City Council has been thorough.

Councillor Johnson moved a motion that Harborough District Council does not sign the Statement.

Councillor King informed the Panel that only one of the eight councils had not signed the Statement and that all other authorities have already signed. He updated the Panel on the upcoming Local Plan Inspection in Charnwood, how this impacts this Statement and other information to provide the context of what is happening around this. He reminded the Panel that its role was not to make a decision, but to provide advice and thoughts about the process. The Director, Planning and Regeneration also confirmed an independent review was undertaken of the work done by the City Council on the levels of growth they can accommodate within its boundary.

The Chair then reminded Councillor Johnson that as this is not a decision-making panel, a motion cannot be moved.

The Interim Deputy Chief Executive advised the Panel that there would be a negative financial impact to the Council if the Statement of Common Ground was not agreed and signed.

Officers highlighted that the recently published SHELAA (Strategic Housing Economic Land Availability Assessment) has been carried out to assess the potential land available in the District. The additional 123 dwellings which the Council was asked to contribute is a good deal for the District, easily achievable given past housing delivery performance, and is relatively small in relation to the numbers being met in other authorities.

In reference to the question from a member of the public, the Strategic and Local Planning Manager responded that the pieces of work referenced (Strategic Transport Assessment and Strategic Growth Options and Constraints Study) have not yet been completed and that when available will be relevant in the longer term to guide future planning decisions in the years 2031 - 2050.

The Director, Planning and Regeneration reminded the Panel that the information they have to scrutinise is in the period to 2036 and stated that they are seeking the Council to sign the Statement of Common Ground to give the Officers the confidence to commission the work to test the apportionment figures for the Local Plan. He stated that Members agreement to this was needed.

Councillor King referred the Panel to the Strategic Growth Plan adopted by the Council and commented on the work that has not yet been completed. He discussed the plan formulated by Leicester City Council and further inspections to take place in the future that may change the distribution of unmet needs. He stated that it is up to the Panel to determine if they need further information.

The Director, Planning and Regeneration commented on the need to start the Local Plan and the need to sign the Statement of Common Ground in order to do this. He discussed the risks of not having a Local Plan.

The Chair invited Panel members to sum up their overall view of the Statement. The Panel highlighted the need to ensure the Council has clear views from each scrutiny Panel to pass on to decision makers.

The Panel referred to the "Points for Discussion, is the policy background to the Statement Clear?" on page 12 of the report. It concluded that the policy background is clear once it is established how the unmet need is apportioned across different authorities. The Panel remain unclear as to how Leicester City are justifying their figure of their unmet need. However, it recognised the consequences of not agreeing the Statement are also clear, and that the Council may in reality have little choice but to sign the Statement. The Panel acknowledged that there may be extra information coming forward in the future, and this may influence the Panel's view however it could only comment on the information before it.

The Panel felt very strongly about the duty to rural residents and reflected on its displeasure at being asked to accommodate unmet need from other authorities as a condition to being able to progress its next Local Plan. The Strategic and Local Planning Manager reminded the Panel that infrastructure is key when considering accommodating growth, and summarised possible changes that could trigger a review of the Statement of Common Ground in the event that detailed testing through the Local Plan indicates this scale of growth can not be delivered. She reminded the Panel of its responsibility to the current and future residents of the District as well as the risks of not signing the Statement, which could impact on the Council's ability to adopt a Local Plan and therefore maintain a five-year housing land supply. The consequences of this were clearly explained.. The impact of not signing the Statement could result in a lack of control over future housing growth in the medium and long term and therefore required careful consideration.

The Chair thanked everyone for their views and input. Following the discussion it was;

RESOLVED, That the minutes of the meeting should be provided to decision making bodies as evidence of the Panel's thorough and thoughtful exploration of the issues surrounding the proposal that Harborough District Council agree to the proposed Statement of Common Ground in respect of the Leicester and Leicestershire Housing Market Area.

5. URGENT BUSINESS

There was none.

The meeting finished at 8.25 pm

Harborough District Council

Report to the Communities Scrutiny Panel Meeting of 15th December 2022



Report Number:	1
Title:	Scrutiny Review
Status:	Public report
Key Decision:	No
Report Author:	Clare Pattinson, Director of Governance and Law.
Portfolio Holder:	Councillor King
Appendices:	A: Centre for Governance and Scrutiny Review letter B: Scrutiny Structure proposals

Executive Summary

The Council commissioned the Centre for Governance and Scrutiny to undertake a review of the overview and scrutiny function to ensure that it is effective. The review focused on accountability, policy and decision making, delivery of Council plans and overall improvement. The review was impacted by the Covid19 pandemic however members were interviewed by the review team between 5 – 7 October 2021. The review also included a review of rules and processes.

Once the review was complete, the Council hosted an all Member workshop on 30 March 2022 to explore the options open to the Council for the development of the scrutiny function.

The top 5 priorities identified by Members from the CfGS review were:

- Chairing, member development and preparation;
- Democratic accountability;
- Making scrutiny an integral part of council business and governance;
- Recommendations and their impact;
- Public engagement.

A key part of the review was to strengthen the overview and scrutiny function. Following robust analysis, and further discussion with the Centre for Governance and Scrutiny, it is proposed that the Council retain two overview and scrutiny panels with an amended scope aligning with the Corporate Plan priorities, and that the Scrutiny Commission is removed.

Recommendations

1. **To discuss the report and its recommendations for the future structure of Scrutiny as detailed in the report.**

Reasons for Recommendations
The Centre for Governance and Scrutiny has confirmed that the proposal to remove the Scrutiny Commission and focus two panels in alignment to the corporate priorities is efficient and proportionate to the size of the Council. It allows for a refresh of the overview and scrutiny function by the Council, underpinned by robust and transparent governance processes and procedures.

Purpose of Report

1. To present the strategies and mechanisms by which the function, purpose and quality of overview and scrutiny activities can be strengthened, and the impact of scrutiny outcomes increased.

Background

2. The Council commissioned the Centre for Governance and Scrutiny (CfGS) to review and evaluate its overview and scrutiny function to ensure it is effective at supporting policy and decision making, delivery of council plans and overall improvement. The review commenced in the Autumn of 2021.
3. The Council has not undertaken a comprehensive review of its overview and scrutiny arrangement for some time, and wanted to check and test that overview and scrutiny arrangements and effectiveness meet the council's high expectations of democratic accountability. Overview and scrutiny plays a key role in ensuring that the Council's activities and decision-making processes are transparent, effective and impactful.
4. The CfGS reviewed the current overview and scrutiny arrangements. The first stage of the review consisted of gathering evidence through conversations with Members directly involved in the current scrutiny process and Officers. The review team also listened to recordings of scrutiny meetings and reviewed key documents on the Council's website.
5. The review assessed the following aspects :-
 - i. **Culture:** the relationships, communication and behaviours underpinning the operation of the overview and scrutiny process, including the corporate approach, organisational commitment, and status of scrutiny;
 - ii. **Member engagement:** Are members motivated and engaged. How do they participate, take responsibility, and self-manage their role?
 - iii. **Member skills and application:** Are skills up-to-date and can Members participate fully or are there development gaps?
 - iv. **Information:** How information is prepared, shared, accessed and used in the service of the scrutiny function;
 - v. **Impact:** Ways to ensure that scrutiny is effective, that it makes a tangible and positive difference to the effectiveness of the council, and to local people;
 - vi. **Focus:** How prioritisation, timeliness and relevance of the work programme and agendas lead to value-adding and productivity;
 - vii. **Structure:** Formats used by scrutiny to carry out its work and their effectiveness.

Details

6. Following the initial evidence gathering, feedback was provided by the CfGS which summarised the findings, highlighting areas where scrutiny performed well, and potential areas for improvement within the current process. A Member development workshop took place in March 2022 where the findings were explored and the suggested improvements discussed. All Members were given the opportunity to provide views and feedback on the suggested improvements.
7. The CfGS found that conditions for successful scrutiny are present at the Council and that there is a shared understanding from Members and Officers that good governance involves scrutiny, and when used effectively scrutiny can add value to decision making. The findings were detailed in a letter to the Council dated March 2022, attached as Appendix A.
8. The suggested areas for improvement identified were grouped into seven themes:

CfGS Theme	CfGS suggestions
Clarity on scrutiny's role and responsibilities	<ol style="list-style-type: none"> 1. A clearer focus on democratic accountability Scrutiny of Cabinet Members should form a key part of the work plan, and Cabinet Members regularly attending scrutiny to answer questions on items falling within their portfolio responsibilities is vital. Alongside this, the CfGS recommends inviting the Leader to attend scrutiny on a quarterly basis to present an integrated finance and performance report. 2. More emphasis on scrutiny as a vital part of Council business and governance With clear council-wide ownership and understanding of its important role in improving policy and holding to account. 3. Developing a Cabinet-Scrutiny protocol To further reinforce the working relationship and expectations between Scrutiny and the Cabinet.
Collaborative approach to scrutiny	<ol style="list-style-type: none"> 4. Developing regular communication and information sharing so that Scrutiny can be a resource that can inform Cabinet decision making. This could be achieved through holding triangulation meetings between Scrutiny Chairs, Cabinet Members and relevant Directors to consider future issues and the part which scrutiny could play in testing and shaping these forward plans. It would also present an opportunity to share and discuss opportunities to involve scrutiny as an improvement asset. 5. Further steps need to be taken to improve cross-party working at HDC. There was a broad agreement that all Members have a duty to uphold their responsibilities as a scrutineer, attend meetings and work towards a shared goal in their committee. Members should consider what further work is necessary to address working relationships.

Scrutiny's focus and workplan	<p>6. Review the process for developing work plans for each scrutiny Panel Engaging Members, Officers, partners and the public to prioritise the topics for review. This process should be led by Members of the Panels and could include a selection criteria to identify appropriate topics for the work plan. Currently the work plan is not discussed on the agenda at scrutiny meetings. The CfGS would recommend bringing it to the beginning of meetings, so emerging issues or changing priorities can benefit from considered discussion.</p> <p>7. A review of the current approach to financial scrutiny, MTFS/ budget scrutiny and the scrutiny of commercial arrangements. The CfGS has produced guidance on financial scrutiny with CIPFA, setting out scrutiny activity to complement the Council's annual financial cycle. The guide suggests ways to move budget and finance scrutiny beyond set-piece scrutiny 'events' and quarterly financial performance scorecards being reported to committee.</p>
Scrutiny committee structure and scheduling	<p>8. Consider a revised scrutiny structure This will include assessing the terms of reference of the Scrutiny Commission in light of value that the committee adds, and assessing whether the term of reference for the two Panels aligns with the Council's key corporate priorities.</p> <p>9. Reviewing the frequency and timing of Scrutiny Panel meetings To position meetings so that they can shape and test policy with enough time to meaningfully input into Cabinet decision-making. This is not to increase workload, but to create more efficient and effective scheduling.</p>
Scrutiny's output and impact	<p>10. Changing the way that information is provided to scrutiny Members for oversight Cut back on the number of items coming to scrutiny solely for information, and consider how information could be shared with councillors on a monthly basis outside of committee.</p> <p>11. Review how the recommendations are made and how impact is measured This could include putting a 'recommendations monitoring report' at the beginning of agendas to orientate scrutiny towards outcomes-focused meetings, alongside an emphasis on finding strong recommendations from questioning to present to Cabinet as improvement or challenge proposals.</p>
Chairing, member development and meeting preparation	<p>12. Chair/Vice Chair training and compulsory member development for all Committee members.</p>

	<p>13. Provision of additional briefing or expert involvement as required.</p> <p>14. All-party pre-meetings for scrutiny committees</p>
Public engagement	<ul style="list-style-type: none"> • Public engagement Explore and experiment to encourage greater access, openness and involvement, including site visits in the community, inviting the public to offer ideas for work plans, using social media channels for resident input and communicating the progress and impact of scrutiny work

9. The CfGS invited members to identify their priorities for development of the overview and scrutiny function. The full ranked list of suggestions for improvement based on Member feedback is detailed in Appendix B however the top 5 priorities identified were:

- i. Chairing, member development and preparation;
- ii. Democratic accountability;
- iii. Making scrutiny an integral part of council business and governance;
- iv. Recommendations and their impact;
- v. Public engagement

Current Structure

10. The Council's current overview and scrutiny arrangements consist of the following :-

- i. 15 scheduled meetings currently in the rota for the municipal year;
- ii. 3 Scrutiny Commission meetings;
- iii. 5 Performance panel meetings;
- iv. 5 Community panel meeting;
- v. 2 reserve dates for additional panel meetings;
- vi. Maximum of 2 task and finish groups at any one time

Options for strengthening the overview and scrutiny function

11. The CfGS suggested that the options open to the Council were:

- i. Leave the arrangements as currently operating;
- ii. Enhance the existing arrangements with a third panel and the recruitment of a part time scrutiny officer;
- iii. Remove the Scrutiny Commission, bolster officer support for the scrutiny function and:
 - a. Increase the number of panels to three; or
 - b. Retain two panels;

12. Given the findings of the CfGS, making no changes to the current arrangements would not enable the improvements required in the delivery of the overview and scrutiny function for the Council.
13. The Council cannot justify the additional cost which would be incurred in the event that Option 2 was adopted, given the current economic climate and substantial budgetary challenges.
14. While Option 3a would secure some of the improvements required for the overview and scrutiny function, it requires the Council to continue to administer three panels and would not sit comfortably with the Council's themes and priorities.
15. Option 3b is the preferred option of the Council as this would enhance the existing two overview and scrutiny panels and align them with the Corporate Plan priorities as follows:
 - Communities Scrutiny Panel – 'Place and Community'
 - 'Healthy Lives'
 - Performance Scrutiny Panel – 'Environment and Sustainability'
 - 'Economy'.
16. However, it is also proposed that the panels be re-named to reflect their area of focus, with the Communities Scrutiny Panel becoming the People Overview and Scrutiny Panel, and the Performance Scrutiny Panel becoming the Place Overview and Scrutiny Panel. Utilising the full statutory title of "overview and scrutiny panel" better reflects the nature of the role that both panels should fulfil in contributing to the strategic direction and corporate performance of the Council. It recognises that both panels are responsible for holding the Council to account on its performance in delivering the corporate priorities
17. It is proposed that the Chairs of the two Panels would work more collaboratively to allocate cross cutting issues and allows for joint overview and scrutiny where it is not appropriate for one panel to be seized of a topic – such as budget matters.
18. Meetings would be scheduled to take place on a quarterly basis, with the focus on the corporate priorities alternating at each meeting. The cabinet portfolio holders who contribute to a corporate priority would be invited to attend and update the panel on that priority and performance in respect of it. The panel would be able to ask questions of the portfolio holder, review council performance and trends and contribute to strategic forward planning. They would also identify topics which would be appropriate to explore further through task and finish groups, identifying future strategies, changing legislation and new pressures.
19. Each Panel would be able to have one task and finish group operating at a time. The task and finish group would be able to explore issues in more detail and operate with more flexibility and responsiveness as it would not be hampered by the democratic restrictions imposed on a committee meeting.

Proposed provision

20. The proposed overview and scrutiny provision would consist of the following :-
 - i. 10 scheduled meetings in the municipal year comprising:
 - Quarterly Place overview and scrutiny panel meetings;
 - Quarterly People overview and scrutiny panel meetings;
 - 2 Joint Budget Scrutiny meetings;

- ii. Each panel may have one task and finish group working at a time, meeting as much or little as determined by the group;
- iii. the panels join together to have a joint task and finish group for cross cutting issues.

21. The benefits of the proposed structure include :-

- Better alignment of meetings to feed into the Cabinet cycle;
- Aligning the Overview and Scrutiny Workplan to complement the combined work plan;
- Scrutiny resources which reflect the four Corporate Plan priorities;
- Clear delineation between:-
 - routine scrutiny (i.e. holding to account for past performance) of Council performance through attendance of Portfolio Holders and officers at quarterly meetings for both Panels; and
 - Pro-active scrutiny (i.e. pre-decision scrutiny) of policies, strategies, changes of approach, challenges to service provision, changing legislation etc.
- Two annual joint scrutiny meetings scheduled to facilitate budget scrutiny – one in autumn with a focus on reviewing past performance, and one in winter to consider the proposed budget;
- Fewer formal meetings to facilitate officer resource for focused task and finish groups, with Members better able to influence the pace of the scrutiny progress;

22. A strengthened overview and scrutiny function would assist in improving the governance of the Council in a number of ways, including :-

- A clear, transparent role and function of overview and scrutiny with all stakeholders;
- Promoting an organisational culture focused on democratic accountability and responsibility – by both Officers and Members;
- A clear, consistent and robust criteria for task and finish groups, with tangible outcomes;
- Scrutiny to be pro-actively used to contribute to pre-decision scrutiny e.g. of policies, operational challenges etc which align to the corporate priorities and have a greater influence on the strategic direction of the Council;
- Better alignment of meetings with the Council and Cabinet scheduled meetings and performance reporting timeframes, allowing more timely consideration of emerging issues and trends;
- Quantifiable and tangible evidence of the impact of Scrutiny on the Council and its performance.

23. The proposed measures would be robustly reflected in a revised and fit-for-purpose Constitution which accurately reflects the role and purpose of the overview and scrutiny function.

Implications of Decisions

Corporate Priorities

24. The purpose of scrutiny is ultimately to improve the lives of local people through improved public services. To justify the resources allocated to scrutiny it is important to be able to demonstrate that scrutiny work adds value and makes a difference to local people. Effective scrutiny can be demonstrated if it fulfils one or more of the following conditions:

- it meets the objectives set out by the Scrutiny Commission / Panels;
- feedback from the public shows that they think there has been the service improvement they desired;
- the work has helped to achieve corporate or partnership priorities;
- there is a return on investment, demonstrating scrutiny's impact and outcomes in financial terms.

Financial

25. Scrutiny is currently resourced through existing officer arrangements, there is no formally designated 'Scrutiny Officer' as current regulations do not require a District Council to designate an officer to discharge the Council's scrutiny functions in an area in which there is a County Council (Local Government Act 2000). Government guidance does state that, 'Authorities not required by law to appoint such an officer should consider whether doing so would be appropriate for their specific local needs' (Overview and scrutiny: statutory guidance for councils and combined authorities, 2019).

26. The cost of the preparation of overview and scrutiny reports is dependent on the subject matter, however utilising more flexible task and finish groups allows meetings to be responsive and fit around availability of officers and members, which should improve the efficiency for all involved in the process. Focusing each panel on distinct priorities ensures there is no duplication of reporting.

27. Reducing the cost of the overview and scrutiny function was not a primary function of the review being undertaken. However, removing the Scrutiny Commission, and Commissioner, removes the obligation to pay a special responsibility allowance, as well as expenses for member attendance at a regular meetings, (for 2021/22 this equated to £6,867) which can then be utilised to support the expenses of the task and finish groups or as a contribution to the current budget pressures.

Legal

28. In accordance with the Local Government Act 2000 and Localism Act 2011, authorities are required to have a mechanism by which the Cabinet can be held to account via a transparent and robust scrutiny function.

29. The review of the Council's overview and scrutiny function is important to ensure that it is effective and adds value to the outcomes delivered for residents of the Harborough District.

Policy

30. Effective and targeted use of the overview and scrutiny function will strengthen the Council's development and delivery of the policies which are important to residents of the district.

Environmental Implications including contributions to achieving a net zero carbon Council by 2030

31.No specific implications are identified as relevant to this objective within this report.

Risk Management

32.No specific implications are identified as relevant to this objective within this report.

Equalities Impact

33.No specific implications are identified as relevant to this objective within this report.

Consultation

34.All Members were given the opportunity to comment on the review findings and proposed suggestions from the CfGS. The ideas relating to the review of the Scrutiny Structure were developed by the Scrutiny Commissioner following the CfGS review of the Scrutiny function which took place in October 2021.

Background papers

35.None

Liz Elliot,
Interim Chief Executive,
Harborough District Council

March 2022

Dear Liz,

Short Scrutiny Improvement Review – CfGS consultancy support

I am writing to thank you for inviting the Centre for Governance and Scrutiny (CfGS) to carry out an evaluation of the Harborough District Council's scrutiny function. This letter provides feedback on our review findings and offers suggestions on how the Council could develop its scrutiny process.

As part of this feedback stage, we would like to facilitate a workshop with Members and Officers to reflect on this review and to discuss options for improvement.

Background

Harborough District Council (HDC) commissioned CfGS to advise and support its Members and Officers in the review of the Council's scrutiny function to ensure that it is effective in providing a quality contribution in accountability, policy and decision making, delivery of Council plans and overall improvement.

The Council has not undertaken a comprehensive review of its scrutiny arrangements for some time and wanted to check and test that scrutiny arrangements meet the Council's high expectations of democratic accountability, and that decision-making and scrutiny is transparent, effective and impactful.

HDC's current scrutiny arrangement consists of an overarching Scrutiny Commission, which sets the scrutiny workplan. This workplan is then split between the Communities Scrutiny Panel and the Performance Scrutiny Panel.

CfGS undertook a review of these scrutiny arrangements, involving evidence gathering online through conversations with Members and Officers on 5th, 6th and 7th October 2021. In addition, we listened to recordings of scrutiny meetings and reviewed key documents on the Council's website.

CfGS met with elected Members and Officers, including the Council Leader and Cabinet Members, Group Leaders, Scrutiny Chairs, Members of the Scrutiny Panels, the Council's senior leadership team and the Scrutiny Officer.

The review was conducted by:

- Ian Parry – Head of Consultancy, Centre for Governance and Scrutiny
- Kate Grigg – Senior Research Officer, Centre for Governance and Scrutiny

The findings and recommendations presented in this letter are intended to advise HDC in strengthening the quality of scrutiny activities, increasing the impact of its outputs, and through its Members, to develop a strong and shared understanding of the role and capability of the scrutiny function.

Summary of findings

1. Scrutiny has the conditions for success

The conditions for successful scrutiny are present at HDC; there is a shared understanding from Members and Officers that good governance involves scrutiny, and when used effectively scrutiny can add value to decision-making. All of those interviewed believed that improvements are needed to make scrutiny more effective and to add greater value.

Given that Members recognise the benefits of change and improvement, this presents a good opportunity for the Council to refresh the way in which scrutiny operates. Change could aim to elevate scrutiny so that it is recognised as a strategic function and is used as a resource for corporate improvement.

2. Officer support and organisational culture

It is clear that the Council's senior leadership team are also committed to supporting scrutiny. Through our conversations, Members were very positive about the assistance they received from Officers who support scrutiny and were highly complimentary about the quality of Officer support within the Council's resource constraints.

Organisational culture was also identified as foundational in improving the quality of scrutiny, and that some aspects of the current prevailing culture may need to be challenged in order to improve governance overall at HDC. The Council's ability to effectively carry out day to day business, as well as to confidently plan for the future, rests on the strength of organisational culture. This includes but is not limited to:

- Mutual respect between Members – within the context of robust political debate and disagreement, and Members respecting Officers as professionals;
- Members and Officers understanding their mutual roles and responsibilities – in the most basic sense, that Councillors lead on strategy and overall direction, while Officers lead on delivery and implementation.

These cultural aspects above are present at HDC, but many Members and Officers that we interviewed recognised that improving these behaviours and ways of working would have a positive influence on decision-making and accountability.

3. Clarity on scrutiny's role and responsibilities

Scrutiny's overall role is to hold the Cabinet to account, to carry out policy development, contribute to improved decision-making, and channel the voice of the public. A good scrutiny function is one that provides not only effective challenge, but is recognised and valued as a body that positively influences policy development.

Through our evidence gathering, Members involved in scrutiny could articulate the role that scrutiny should play in being an integral part of the council's governance structure and contributing to the council's budgetary and policy making function. However, many seemed to be unclear on who exactly scrutiny should be holding to account.

In practice, strategic challenge of Cabinet Members needs to be strengthened. Within meetings we found that scrutiny tends to focus on Officers and Officer reports - where Cabinet Members are

involved in scrutiny meetings this is usually light touch rather than an exploration of current policy, or decisions where scrutiny can play a valuable role in shaping and improving.

The experience from elsewhere is that when Cabinet Members attend and are the focus of questioning, a more strategic exchange takes place and better recommendations are achieved. To enact effective democratic accountability, scrutiny needs to recognise its role and responsibility in holding Cabinet Members to account, ensuring questions are directed to the relevant portfolio holder and are linked to clear priorities.

For scrutiny to be more strategic there needs to be change from both scrutiny and the Cabinet. If the Council wants more emphasis on shaping policy, challenging and holding to account, then scrutiny will need earlier access to and involvement with the core policy and decision-making activities of Cabinet. Our discussions concluded that the Leader, Cabinet and Scrutiny recognise and agree that greater collaboration and engagement would be strongly beneficial.

We would recommend:

- **A clearer focus on democratic accountability** - Scrutiny of Cabinet Members should form a key part of the work plan, and Cabinet Members regularly attending scrutiny to answer questions on items falling within their portfolio responsibilities is vital. Alongside this, we also recommend inviting the Leader to attend scrutiny on a quarterly basis to present an integrated finance and performance report.
- **More emphasis on scrutiny as a vital part of Council business and governance** - With clear council-wide ownership and understanding of its important role in improving policy and holding to account.
- **Developing a Cabinet-Scrutiny protocol** - To further reinforce the working relationship and expectations between Scrutiny and the Cabinet.

4. Collaborative approach to scrutiny

Scrutiny is meant to be a forum for the evidence-based discussion of issues affecting local people where challenge is welcomed and encouraged. However, from our conversations many highlighted that scrutiny tended to be very political, and cross-party working was lacking.

In any democratic institution, there will be differences of opinion and disagreement about policy and decisions - this should be accepted. However, if scrutiny encounters become too politically charged or adversarial this can diminish mutual trust and respect and lead to defensive and negative outcomes, rather than resulting in creative and useful exchanges.

We heard that proactive engagement between scrutiny and Cabinet could also be improved both before and during scrutiny meetings. While Cabinet Members attend meetings, their involvement with the scrutiny process should be more visible and regular. There is also work to be done to establish parity of esteem between scrutiny and Cabinet. Putting scrutiny and Cabinet on a more equal footing will create conducive conditions for effective challenge to happen, and will bring benefits in terms of improved decision-making.

Some concerns were also raised regarding the professional conduct between Members, and between Members and Officers. There is evidence that the tone taken within scrutiny can at times be perceived as combative rather than constructive, which weakens scrutiny as a forum for open and candid exchange. Putting scrutiny and Cabinet on a more equal footing may help address the

concerns raised. Alongside this, Members should have regard to the expectations set out in the Council's Member Code of Conduct regarding respectful behaviour and leading by example.

There is also mixed level of engagement from those who sit on scrutiny, with some Members showing minimal levels of involvement within committee meetings. Engagement, contributions and challenge from all Members of scrutiny is essential if individuals Members wish to have an influence on shaping decisions, and if scrutiny is to fulfil its role in being a space for cross-party inquiry. This not only requires attendance, but background preparation for the meeting.

We would recommend:

- **Developing regular communication and information sharing so that Scrutiny can be a resource that can inform Cabinet decision making.** This could be achieved through holding triangulation meetings between Scrutiny Chairs, Cabinet Members and relevant Directors to consider future issues and the part which scrutiny could play in testing and shaping these forward plans. It would also present an opportunity to share and discuss opportunities to involve scrutiny as an improvement asset.
- **Further steps need to be taken to improve cross-party working at HDC.** There was a broad agreement that all Members have a duty to uphold their responsibilities as a scrutineer, attend meetings and work towards a shared goal in their committee. Members should consider what further work is necessary to address working relationships.

5. Scrutiny's focus and workplan

There is a recognition that scrutiny at HDC needs to focus on more strategic issues, where it can have influence, and that scrutiny should input into the decision-making process at an earlier stage than it does currently.

Scrutiny has a tendency to be more retrospective, rather than forward looking. It is important that scrutiny carries out reviews and assess performance, but there is a missed opportunity for it to add value to council policy and strategy through greater emphasis on the big challenges and opportunities ahead for the district.

The Council's corporate plan should direct scrutiny's focus, but business does not always seem to be aligned with either the Council's overall priorities or with pressing performance or risks - when topics are reviewed the focus tends to be operational rather than strategic or outcome focused. There are some positive signs and examples of useful work by scrutiny where it has selected key issues to scrutinise and to explore, but these were described as the exception rather than the norm.

Scrutiny should focus its attention on cross-cutting issues which affect communities across the district, avoiding parochial issues affecting single wards. In concentrating on critical issues, scrutiny will be able to focus on understanding how the Council proposes to mitigate some of the most significant challenges facing local people.

Finance and budgets receive only annual scrutiny, and there is little in-year or in-depth analytical challenge of the budget-making process or the Council's financial performance. Considering the substantial gap in the budget last year and the new approach to making savings, scrutiny should be meaningfully involved in oversight of this process and challenging the rate of progress made.

Work planning is key to ensuring scrutiny stays focussed on strategic issues where it can make an impact, whilst making the best use of time and resources. From our conversations we noted that

many Members felt that they have little opportunity to influence scrutiny work plans, and the way that issues are prioritised. Harborough's scrutiny function may need to consider how it organises its work plans in a way that is led by Members of the Panels in order to have ownership over committee activity.

It is important to emphasise that work planning is an ongoing process and not just a one-off event. Whilst a workshop will help identify priorities and provide structure to work for the months ahead, there will need to be flexibility in the work plan and time set aside to regularly revisit the relevance of topics in meetings as the local context changes.

We would recommend:

- **Review the process for developing work plans for each scrutiny Panel** - Engaging Members, Officers, partners and the public to prioritise the topics for review. This process should be led by Members of the Panels and could include a selection criteria to identify appropriate topics for the work plan. Currently the work plan is not discussed on the agenda at scrutiny meetings. We would recommend bringing it to the beginning of meetings, so emerging issues or changing priorities can benefit from considered discussion.
- **A review of the current approach to financial scrutiny, MTFs/ budget scrutiny and the scrutiny of commercial arrangements.** We have produced guidance on financial scrutiny with CIPFA¹, setting out scrutiny activity to complement the Council's annual financial cycle. The guide suggests ways to move budget and finance scrutiny beyond set-piece scrutiny 'events' and quarterly financial performance scorecards being reported to committee.

6. Scrutiny committee structure and scheduling

Changing the structure of scrutiny committees is rarely a universal solution to bring about immediate changes, the cultural issues are more important. However, we received a lot of feedback that the current structure of an overarching Scrutiny Commission and two thematic Scrutiny Panels for a council the size of HDC may not be the most effective use of resources and is creating confusion.

It has been reported that the current structure often leads to duplication between the three committees and takes significant resource to support. The role of the Scrutiny Commission appears to be limited to suggesting and approving topics for the Panel workplans and to oversee and monitor all Scrutiny work, but this could potentially be managed by the committees themselves.

Through our evidence gathering, it was not always clear how the role of the *ex officio* Scrutiny Commissioner related to the Chair and Members of the Scrutiny Panels when attending Panel meetings. It may be appropriate to review the role of the Scrutiny Commissioner in contributing to the Panels, to define the purpose and involvement, and to ensure that the Chair and Members sitting on each respective Panel are able to lead and take ownership over their committees.

The frequency and timing of scrutiny meetings has also been highlighted as a barrier in creating greater impact. Whilst the Cabinet meets on a monthly basis, Scrutiny Panels tend to meet quarterly. Not only will this frequency inevitably lead to overpacked agendas, but it may improve Member engagement to meet on a more regular basis with a focus on shorter, sharper meetings. Aligning scrutiny meetings to occur enough time prior to Cabinet will also assist in building greater

¹ CfGS & CIPFA (2020) 'Financial scrutiny, practice guide' - https://www.cfgs.org.uk/wp-content/uploads/Financial-scrutiny-practice-guide_proof3.pdf

policy development into scrutiny, giving the opportunity for scrutiny to operate more 'upstream' in the decision-making process.

We would recommend:

- **Consider a revised scrutiny structure** – This will include assessing the terms of reference of the Scrutiny Commission in light of value that the committee adds, and assessing whether the term of reference for the two Panels aligns with the Council's key corporate priorities.
- **Reviewing the frequency and timing of Scrutiny Panel meetings** – To position meetings so that they can shape and test policy with enough time to meaningfully input into Cabinet decision-making. This is not to increase workload, but to create more efficient and effective scheduling.

7. Scrutiny's output and impact

When asked about scrutiny's output and impact most Members and Officers found it difficult to point to more than a couple of examples of work that has made a real difference, or substantive recommendations that have been implemented.

The majority of successful examples of scrutiny at HDC were task and finish group work. Scrutiny would benefit from further use of task and finish groups or spotlight events where single issues of major importance to the Council or community can be considered and explored in greater detail. This can add significant impact and quality to scrutiny activity. But must be clearly scoped, resourced, time-limited and with clear objectives to be useful and effective.

We noted for a number of the substantive items considered by scrutiny committees the conclusion of the discussion did not always have an articulated outcome, or otherwise could be seen as solely for the purpose of obtaining information or to obtain updates. The practice of reports being presented 'to note', or inviting speakers only to share information, should be avoided. This can lead to missed opportunity for insightful questioning, if scrutiny has no value to add to a topic being considered, then it should not be on the agenda. As a matter of general principle, items for information or updates should be shared with Members as briefing notes outside of committee.

We noted that there is a process in place to monitor recommendations. An effective scrutiny function should be able to review recommendations in 6- or 12-months' time to see that the outcomes have made a difference or added value. Improving systems to monitor the Cabinet's response and implementation of recommendations that have been accepted will help track scrutiny's outcomes and Councillors' perceptions on the effectiveness of work.

When members of the Cabinet and senior Officers are asked to attend, Scrutiny Panels would benefit from being clear about what the aims and objectives are of the session (including clarity over the content of any reports and presentations). Through our recommendation of establishing pre-meetings in the next section, this can also improve scrutiny's impact by allowing the space to create a shared understanding and trying to discuss beforehand what recommendations the committee might make on the day, and how the Cabinet might respond to them.

In carrying out 'external' scrutiny work, it is important to ensure that scrutiny has a clear focus on objectives and is able to influence outcomes concerning the topic discussed.

We would recommend:

- **Changing the way that information is provided to scrutiny Members for oversight -** Cut back on the number of items coming to scrutiny solely for information, and consider how information on the following matters could be shared with councillors on a monthly basis outside of committee:
 - Performance, finance and risk information for council services and those operated by partners;
 - Information about complaints handling;
 - The schedule of key decisions;
 - Details of any major council consultation carried out and their results, and consultations proposed to be carried out;
 - Information on external oversight – data produced by the external auditor and any form of inspection to which council services might be subject.

- **Reviewing how the recommendations are made and how impact is measured –** This could include putting a ‘recommendations monitoring report’ at the beginning of agendas to orientate scrutiny towards outcomes-focused meetings, alongside an emphasis on finding strong recommendations from questioning to present to Cabinet as improvement or challenge proposals.

8. Chairing, member development and meeting preparation

Scrutiny’s success is dependent on the right Members, with the right capabilities and attributes, leading and managing the scrutiny function. Scrutiny Chairs have a vital task in leading the committee, ensuring that it builds and maintains strong relationships with the Cabinet, Officers and relevant external partners.

Chairs can also lead on setting the working culture of scrutiny, helping it to set and uphold high standards of behaviour, engagement and debate, ensuring good cross-party working. The lack of opposition Members involved in scrutiny chairing roles was raised as an issue in our evidence gathering. Although there is no single ‘right’ approach to selecting chairs - the emphasis ought to be on selecting chairs based on skill set and capability and providing ongoing training and support.

Scrutiny provides an excellent opportunity to support Members in getting an in-depth understanding of issues across the Council’s services. To get the most out of scrutiny, Members need a clear sense of what is required of them as committee Members and the work involved which allows good scrutiny to happen.

Many Members were unsure of how to achieve impactful scrutiny, some were also open about a lack of understanding about the specific areas they are asked to scrutinise. Members felt that more briefings to provide them with core knowledge, especially on more complex or technical issues would be welcome and equip them better as scrutineers.

We heard that the quality of questioning in scrutiny varies; in some instances, it is forensic and probing, but it is often more general and exploratory and sometimes superficial. HDC is clearly committed to Member development, and training was raised by some Members who were clearly aware of the gaps in their knowledge and understanding.

A number of Members felt that reports were long and make demanding reading, which may prevent some Members from fully engaging. It was also acknowledged by Officers that reports in HDC have historically been very detailed and could benefit from being shorter and preceded by an executive summary to draw out the main themes and findings.

From the recordings of committee meetings there is little evidence of co-ordinated questions or Members acting as a team with clear lines of inquiry. Pre-meetings could allow Members to give

voice to their objectives for meetings and allow mutual motivations to be understood and questioning strategies to be agreed. It is likely that differences will remain and will in some cases be significant, but the airing of these differences will make it easier for Members to understand where consensus is possible.

We would recommend:

- **More skills development support is offered for the key roles of Chair and Vice-Chair** – To provide them with the confidence they need in leading the scrutiny function.
- **There should be mandatory scrutiny development and training for all committee members** - To develop a common understanding of what “good” scrutiny practice looks like.
- **Providing additional briefing or expert involvement as required** - To assist scrutiny members in becoming more capable to develop questioning strategies that will deliver high-impact and value-adding scrutiny.
- **Cross-party pre-meetings for scrutiny committees should be established** - With a specific focus on identifying priorities and Members working together to develop lines of enquiry so that recommendations are more likely.

9. Public engagement

Scrutiny should explore and experiment with ways to allow greater access, openness and involvement with the public. This could include scrutiny going on more site visits in the community, inviting the public to offer ideas for work plans, and greater use of social media channels for resident input and communicating the progress and impact of scrutiny work.

Thank you and acknowledgements

We would like to thank the Chairs, Members of the Scrutiny Commission and Panels, Cabinet Members and Officers who took part in interviews for their time, insights and open views.

Yours sincerely,

Kate Grigg
Senior Research Officer

Appendix B

Ranked list of suggestions for improvement based on Member feedback

Prioritised suggestions for improvement	Timescale	Current progress	Recommendation / Action to be undertaken
1. Chair/Vice Chair training / compulsory development & training for all Scrutiny members	Short-term	Training and development for Members relating to scrutiny, and skills development support for the key roles of Chair and Vice Chair forms part of the Member Development training plan.	
2. Clearer focus on democratic accountability			<p>Recommendations</p> <p><i>i. That the relevant Cabinet members be given a standing invite to Scrutiny Panels to answer questions on items falling within their portfolio responsibilities.</i></p> <p><i>ii. That the Leader be invited to attend scrutiny on a quarterly basis to present an integrated finance and performance report.</i></p>
3. Vital part of Council business and governance	Short-term	The Director of Governance and Law is currently undertaking a governance review.	

<p>4. Review process for developing work plans for Scrutiny Panels</p> <p>5. Review how recommendations are made & impact is measured.</p> <p>6. Improve information sent to scrutiny Members.</p>	<p>Short-term</p>		<p>Engaging Members, Officers, partners and the public to prioritise the topics for review. This process to be led by Members of the Panels and should include a selection criteria to identify appropriate topics for the work plan.</p> <p>Recommendations</p> <p><i>iii. That all topics/work programme items proposed for scrutiny have a clear purpose, based on a selection criteria, and not to just seek information or receive an update. Items to be based on community concern, known issues or improvement required.</i></p> <p><i>iv. That an annual review and evaluation of recommendations proposed within the scrutiny function be undertaken.</i></p> <p><i>v. The workplan for each Panel to be considered at the start of each meeting.</i></p> <p>At the conclusion of a scrutiny topic, recommendations should be submitted to the Cabinet in a reasonable time period and; at the time recommendations are submitted to the Cabinet, a date when the Committee wishes to receive a response by should also be included.</p> <p>The annual review and evaluation of the scrutiny recommendations, with a requirement to be linked to Corporate</p>
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			priorities, will be recorded via Pentana, and will enable the impact of the interventions to be measured.
7. Public engagement	Long-term	<p>An engagement strategy for the Council is currently being developed. This will consist of a toolkit for service areas and a 'promise' to residents which will set out how residents can engage with the Council, the process to do this and details of activities/projects the Council undertakes which requires input from residents. A draft of this strategy is due in September.</p> <p>NB: As there is no budget assigned to this work or extra resource, this will be delivered by focussing resources and improving what the Council does in order to manage expectations.</p>	<p>Recommendations</p> <p><i>vi. That the engagement strategy proactively encourages public participation and that a variety of communication channels be regularly updated with an overview of the work being undertaken by the Council's scrutiny function.</i></p>

8. Additional briefings or expert involvement as required	Short-term	Pre-meetings for the Chair and Vice-Chairs prior to the agenda being dispatched already take place. Experts are involvement in meetings as required.	
9. Develop a scrutiny protocol	Long-term		
10. Review frequency & timing of Scrutiny Panel meetings	Short-term	The rota of meetings for 2022-2023 and 2023-2024 has enabled more provision for Scrutiny panel meetings.	
11. Review current approach to financial scrutiny / MTFS/budget scrutiny etc	Short-term		
12. Develop regular communication & info sharing with Cabinet	Short-term		Triangulation meetings between Scrutiny Chairs, Cabinet Members and relevant Directors can occur to consider future issues and the part which scrutiny could play in testing and shaping these forward plans.
13. Revise scrutiny structure	Short-term	As detailed in the main report.	
14. All-party pre-meetings	Long-term	Pre-meetings have already commenced with Chairs and Vice-Chairs, however the suggestion of all-party	

		pre-meetings is a longer term aspiration.	
15. Improve cross-party working	Long-term		Consideration be given as to ways in which this suggestion can be implemented post the 2023 elections.

Harborough District Council

Report to the Communities Scrutiny Panel Meeting of 15 December 2022



Report Number:	2
Title:	Development Management Services Update
Status:	Public report
Key Decision:	No (not a decision-making report)
Report Author:	Christine Zacharia, Team Leader Planning Enforcement c.zacharia@harborough.gov.uk
Portfolio Holder:	Councillor Jonathan Bateman, Cabinet Lead Member for Planning - Environmental Services & Waste Management.
Appendices:	Appendix A Revised Local Enforcement Plan Appendix B Public Open Space Protocol Document

Executive Summary

This report is presented to Scrutiny for consideration in respect of:

- The Revised Local Enforcement Plan.
- A process for handling public open space.
- The outcome of a review of the Council's Development Management Services' handling of the approved landscape management plan (LMP) for the Mulberry Homes development at Hursley Park, Great Bowden (planning reference 15/01801/OUT & 16/02083/REM).

Recommendations

That the Panel review and comment on the contents of this report.

1. Purpose of Report

- a. This report seeks the comments of the Scrutiny Panel in respect of the adoption of a revised draft Local Enforcement Plan for dealing with development control enforcement issues and a protocol for the handling of public open spaces.
- b. The report also proposes a process of consultation with relevant members in respect of non-material planning applications amendments and variations to planning conditions where the associated primary planning application was presented to, and agreed by, the Council's Planning Committee.

2. Points for Discussion

- i) Do Panel have any comments on the contents of the revised draft Local Enforcement Plan (LEP) at Appendix A, and are they content to recommend it to Cabinet?
- ii) Do Panel have any comments concerning the proposed process for managing non-material amendments (NMA) and variations of conditions (VAC) set out in paragraphs 4.2, 4.3 and 4.4 below?
- iii) Are Panel content to review and note the Public Open Space Protocol, at Appendix B, and outlined at paragraph 4.9 below? This protocol is designed to make it easier for the community to understand the planning processes for new Public Open Space. This protocol is based on the up-to-date Open Spaces Strategy adopted by the Council in June 2021.

3. Background

3.1 At its meeting of the 24 May 2022, the Planning Committee resolved:

- 2.5 That the Planning Committee request the Scrutiny Commission explore how further oversight may be given to the Chairman and/or the Planning Committee regarding instances when changes are made to conditions on applications previously agreed by the Planning Committee and ask for the policy on enforcement to be reviewed.
- 2.6 That the Planning Committee request the Scrutiny Commission consider the need to review the circumstances in which the Council might adopt large, significant open spaces.
- 2.7 That the Planning Committee request the Scrutiny Commission explore the possibility of implementing a compliance check on the standards of large, significant open spaces for which responsibility is due to be handed over to a Residents Management Committee, before the large, significant open space concerned is signed off by the Council and the Residents Management Committee concerned takes responsibility for it.

3.2 This report addresses recommendations 2.5, 2.6 and 2.7 detailed above.

4. Details

- 4.1 **Recommendation 2.5** *That the Planning Committee request the Scrutiny Commission explore how further oversight may be given to the Chairman and/or the Planning Committee regarding instances when changes are made to conditions on applications previously agreed by the Planning Committee and ask for the policy on enforcement to be reviewed.*
- 4.2 On receipt of a NMA or a VAC application, the Council's Validation officer will check whether the primary application associated with the NMA, or VAC was either an officer delegated decision or a decision of the Planning Committee. If the latter, the Validation officer will send an email to the Planning Committee Chair, and the relevant Ward Member(s) advising them of the application, giving them 14 days to respond with any comments. If no comments are received within that period from either the Planning Committee Chair or the relevant Ward

Members(s) it will be deemed that either the Planning Committee Chair and/or the relevant Ward Member(s) are content with the proposed NMA or VAC.

4.3 It should be noted that:

- a. There is no statutory definition of 'non-material', this is because it will be dependent on the context of the overall scheme (section 96A of the Town and Country Planning Act 1990)
- b. An application to make a non-material amendment is not an application for planning permission
- c. Unlike a planning application Local Planning Authorities have only 28 days to determine a NMA application, or a longer period if that has been agreed in writing between the parties.
- d. In terms of a VAC application to vary or remove conditions associated with a planning permission (section 73 of the Town and Country Planning Act 1990), Local Planning Authorities have 8 weeks to determine such applications (13 weeks if associated with a major development). If the application is not determined within this time, the applicants have a right of appeal to the planning inspectorate.

4.4 It is recommended that the above consultation procedure as set out in paragraph 4.2 above commences on and from the 1st January 2023.

4.5 **Recommendation 2.6** *That the Planning Committee request the Scrutiny Commission consider the need to review the circumstances in which the Council might adopt large, significant open spaces*

4.6 The Council's new Open Spaces Strategy 2021 (OSS 2021) was presented to the Panel on the 25 March 2021 and was subsequently adopted by the Council on the 21 June 2021. Importantly at paragraph 9.25 of the OSS 2021 it states "Harborough District Council will not routinely adopt open space provided as part of new development. The Council may adopt open space which has strategic value within the district, e.g., those which draw visitors from further afield". It is important that Panel should note that in the light of the fact that the Council have so recently adopted the up-to-date Open Spaces Strategy 2021 it is not due for further review for around 5 years from the date of adoption.

4.7 It is therefore not proposed to proceed with recommendation 2.6 further given the Council's recently adopted OSS 2021.

4.8 **Recommendation 2.7** *That the Planning Committee request the Scrutiny Commission explore the possibility of implementing a compliance check on the standards of large, significant open spaces for which responsibility is due to be handed over to a Residents Management Committee, before the large, significant open space concerned is signed off by the Council and the Residents Management Committee concerned takes responsibility for it.*

4.9 The draft Open Space Protocol document, attached at Appendix B, sets out the different stages for delivery of POS through the planning system. Panel are asked to review and note the Public Open Space Protocol. This is a technical and operational document, it does not require a member decision, and making this available to the community will assist them in understanding the process new open space follows as it proceeds through the planning

process. Panel should note that the protocol is based on the up-to-date Open Spaces Strategy recently adopted by the Council in June 2021. This addresses recommendation 2.7.

5. Implications of Decisions

5.1. Corporate Priorities

The formal decision-making process supports all the Corporate Priorities.

5.2. Financial

No financial issues arise directly from this report.

5.3. Legal

No legal issues arise directly from this report.

5.4. Policy

The Council needs to ensure that it has an up-to-date Local Enforcement Plan as set out in paragraph 59 of the National Planning Policy Framework 2021.

5.5. Environmental Implications including contributions to achieving a net zero carbon Council by 2030

None as far as this report is concerned.

5.6. Risk Management

None as far as this report is concerned.

5.7. Equalities Impact

None as far as this report is concerned.

5.8. Data Protection

No data protection issues arise directly from this report.

6. Summary of Consultation and Outcome

6.1 Not applicable to the contents of this report.

7. Alternative Options Considered

7.1 Not to request that Panel recommend to Cabinet that it approves the revised draft of the Local Enforcement Plan and/or not to ask Panel to review and note the Public Open Space

Protocol. Neither alternative option is recommended as they would fail to adequately address the resolutions of Planning Committee.

8. Background papers

- Reports to the Planning Committee meeting 24 May 2022 and minutes of that meeting considered by Planning Committee on 21st June 2022.
- Adopted Harborough District Council Open Spaces Strategy 2022



APPENDIX A



Local Enforcement Plan

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1st published April 2018
Revision 1 (Draft) [] 2022
April 2018

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Annex 1: The Regulators 'Code

Annex 2: The Enforcement Process
Annex 3: Glossary of Enforcement Terminology
Annex 4: Types of Enforcement Action – The Tools
Annex 5: Planning Enforcement Service Standards

Preface

Harborough District Council is firmly committed to the effective and proportionate enforcement of planning control. It views breaches of planning control very seriously, with a specialist Planning Enforcement Team within the Development Management Service tasked with resolving planning breaches. In accordance with paragraph ~~207-59~~ of the National Planning Policy Framework ~~2021~~ (NPPF) this Local Enforcement Plan has been prepared to outline the approach that will be taken by the Council to remedy unauthorised development, and the procedures that will be followed.

For the avoidance of doubt, this Local Enforcement Plan ~~is intended to replace~~ ~~view and replace~~ the District Council's existing ~~Local Enforcement Plan which was adopted in April 2018 Planning Enforcement Protocol Document (October 2007)~~ and has been produced in accordance with the guidance set out in paragraph ~~207-59~~ of the NPPF.

1. Legislative Framework, Guidance and Policy

1.1 Legal Context

1.2 The Council has the responsibility for taking planning enforcement action which it deems necessary and proportionate within its area as the Local Planning Authority. A private citizen cannot initiate planning enforcement action. The Council has powers to investigate and ~~take action~~ ~~act~~ to remedy breaches within the Town and Country Planning Act 1990 (as amended), The Planning (Listed Building and Conservation Areas) Act 1990, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, the Localism Act 2011 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

1.3 Enforcement provisions within the Localism Act 2011 give Council's ~~the~~ power to decline to determine an application for planning permission where the land subject to an existing Enforcement Notice which prevents abuses by developers/applications of twin tracking an appeal against an enforcement notice and an application for retrospective approval. The Act also gives the Council powers over a greater ~~time period~~ ~~period~~ to take enforcement action against concealed breaches. The Act also provides greater penalties and increased powers to ~~the~~ Council in relation to fly-posting and graffiti.

1.4 The Council will consider the use of powers under the Proceeds of Crime Act 2002 to appropriate all assets gained by owners and occupiers through the non-compliance of an enforcement notice ~~should it be in the public interest to do so~~.

1.5 Planning enforcement action should be sensitive to the intent and context of the owner and the development. A householder making a genuine mistake out of ignorance will be treated proportionately, compared to a person knowingly breaching planning legislation.

1.6 ~~Harborough Local Plan 2011 to 2031 Harborough District Local Development Framework, Core Strategy 2006—2028~~

1.7 Any enforcement action taken by the Council must be led by the policies of the relevant ~~Development Local~~ Plan currently being the ~~Harborough Local Plan 2011 to 2031 Harborough District Local Development Framework, Core Strategy 2006—2028~~ and any associated Enforcement Policy (General Enforcement Policy, September 2015).

1.8 The National Planning Policy Framework

1.9 Enforcement is referred to in paragraph ~~207–59~~ of the National Planning Policy Framework (NPPF) ~~2012~~2021. The discretionary and proportionate nature of enforcement is ~~stressed~~stressed, and it is suggested that local planning authorities should 'consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised ~~development~~development, and take action where it is appropriate to do so'.

1.10 Government 'Planning Practice Guidance'

1.11 Advice from ~~Central~~the Government on planning enforcement is set out primarily in the 'Planning Practice Guidance' (PPG) '~~Enforcement and Post Permission Matters~~Ensuring Effective Enforcement' ~~that came into effect on the 1~~(March 2014 updated July 2019). It emphasises the importance for Local Planning Authorities to prepare and adopt a local enforcement plan because it:

- ~~Sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;~~
- ~~Sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;~~
- Provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
- Provides greater certainty for all parties engaged in the development process and;
- Recognises the need for balance where human rights or equalities issues may be engaged (whether those of the person breaching planning or persons affected), and whether the decision is to take action or to take no action

1.12 The PPG also states:

"Effective enforcement is important to:

- tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- maintain the integrity of the decision-making process; and
- help ensure that public acceptance of the decision-making process is maintained"

2. The Council's key planning enforcement aims

2.1 The Council's key aims are to:

- a. effectively and efficiently remedy the undesirable effects of unauthorised development and breaches of planning control by working with landowners, operators, Councillors, Parish Councils and the general public;
- b. bring unauthorised activity under control, in a timely manner, to ensure that the credibility of the planning system is not undermined; and,
- c. help facilitate appropriate and high-quality development through the development management process.

3. The Council's key planning enforcement objectives

3.1 The Council's primary objective of the planning enforcement function is to remedy harm to public amenity resulting from unauthorised development, and to control it, making sure the integrity of the planning system is not undermined. In striving to achieve the objectives set out below, the Council whilst not condoning wilful breaches of planning control, will not take disproportionate action and will not seek to "punish" those responsible for breaches by taking action against technical breaches that cause no serious harm to public amenity.

~~In order to~~To meet its key aims the Council will:

- a. investigate all complaints pertaining to breaches of planning control in respect of district matters;
- b. investigate and seek to resolve breaches of planning control caused by unauthorised developments;
- ~~c. proactively monitor consented sites regularly to verify compliance with the consent and any conditions attached to consents and seek compliance where breaches are identified;~~
- ~~d.~~c. acknowledge complaints received about breaches of planning control within three working days;
- ~~e.~~d. on receipt of a complaint undertake an initial site inspection within; one working day for top priority cases; five working days for high priority cases and ten working days for standard priority cases;
- ~~f.~~e. decide on the most expedient course of action to deal with breaches of planning control and notify all complainants concerned within 20 working days of receiving a complaint of the planning enforcement team's preliminary investigations;
- ~~g.~~f. keep complainants informed of progress throughout the processes of investigating and taking action on breaches of planning control;
- ~~h.~~g. keep all details of complainants in confidence subject to the ~~council's~~ Council's legal duty under the Freedom of Information Act 2000;
- ~~i.~~h. always consider the expediency of taking formal enforcement action, and only taking enforcement action when it is considered essential to protect the amenity of the area, public or highway safety, and/or the integrity of the planning process;
- ~~j.~~i. only take formal enforcement action, or require remedial action, which is proportionate to the breach;
- ~~k.~~j. set reasonable but firm deadlines for actions required to resolve breaches of planning control, and make these clear to all parties concerned;
- ~~l.~~k. only invite a retrospective application (without prejudice) to regularise a breach where there is a reasonable prospect that planning permission would be granted, ~~and/or subject to planning conditions~~ (notwithstanding the rights of an alleged offender to submit such an application);
- ~~m.~~l. facilitate appropriate development that conforms to planning policy, and try to secure the best possible development retrospectively where suitable;
- ~~n.~~m. proactively work and cooperate with other regulating authorities and agencies to resolve breaches of planning or other legislation, share intelligence, and reduce crime;
- n. not normally investigate anonymous, vexatious and repetitive complaints, unless they allege serious breaches of planning control which can be substantiated.
- o. As resources permit, proactively monitor consented sites to verify compliance with the relevant planning permission and any conditions attached to approval decisions and seek compliance where breaches are identified.

4. Breaches of Planning Control

4.1 What is a Breach of Planning Control?

4.2 Planning law defines development as either:

- Operational Development – this is anything built on, over or under land, and would include a new house, road, sewers, ~~embankments~~embankments, and some forms of demolition.
- Material Change of Use - this is any change of use of a building or land and would include for example the ~~sub-divisions~~subdivision of a single dwelling house to self contained flats.

4.3 A breach of planning control is therefore defined as **development** carried out without the relevant permission first being obtained (or the activity being carried out is not being done in accordance with the approved plans/specifications and/or a planning condition attached to a permission) from the Council. Parliament has decided that in law, the carrying out of unauthorised works or changes of use should not initially constitute a criminal offence. However, unauthorised works to a listed building, total or substantial demolition in a conservation area, the unauthorised display of advertisements, and unauthorised works to protected trees; do constitute a criminal offence.

4.4 Types of breaches investigated

4.5 Some examples of breaches of planning control that the Council investigates are:

- Unauthorised changes of use, for example unauthorised siting of a caravan on agricultural land being used as a person's main residence;
- Unauthorised engineering operations, such as raising of ground levels, construction of a building without planning permission;
- Breaches of conditions attached to planning permissions, such as contractor working hours, hours of operation of a business outside that specified by a planning condition; ~~non-compliance~~non-compliance of landscaping conditions;
- Unauthorised display of advertisements, hoardings and signs;
- Unauthorised works to listed buildings, such as the removal of key internal walls, staircases and original flooring;
- Deliberate concealment of unauthorised building works or changes of use;
- Unauthorised demolition within a conservation area beyond that permitted by any order;
- Unauthorised works to trees subject to a tree preservation order (TPO) or in a conservation area;

- Untidy land where it significantly affects the amenity of the area;
- Unauthorised works to hedgerows

4.6 Non-planning issues

4.7 The Council receives many requests regarding issues that do not involve a breach of planning control. It is important to identify the issues which are relevant to planning and those which do not come within the remit of planning enforcement.

Examples of issues that do not constitute 'development' and are not planning matters include:

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- Matters relating to trees that are not within a conservation area or protected by a Tree Preservation Order or a planning condition;
- Unauthorised use of the highway, for example, for car repairs or parking contraventions;
- Dangerous structures / subsidence, health and safety issues;
- Internal refurbishment of buildings that are not listed;
- Party wall or land ownership disputes;
- Covenants imposed on property deeds;
- Pests or vermin;
- Parking of caravans on residential driveways or within the curtilage of domestic properties as long as they are incidental to the enjoyment of the property.

4.8 To complicate matters there have been numerous changes in planning law that allow some forms of 'development' to proceed without having to submit a planning application. The most significant of these are known as **Permitted Development Rights "PD"**. These 'rights' principally stem from a Government Order and, amongst other things, allow people to extend their homes, erect outbuildings within their residential curtilage that are compliant within certain criteria without having to apply for planning permission.

4.9 These types of 'permitted development' may need to be investigated, for example, to accurately measure the size of a house extension, height of an outbuilding. However-but most any of these cases can be established as being permitted development at the point of receiving the alleged breach.

Examples of where developments may be permitted include:

- Small residential extensions;
- Satellite dishes;
- Fences and walls;
- Means of access and hardstandings;
- Outbuildings, sheds or greenhouses;
- Loft conversions;
- Internal building works;
- Certain types of advertisements; and

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- The alteration or the insertion of doors or windows in houses.

5. How the Council deals with complaints of alleged breaches of planning control.

5.1 Information required

5.2 Before an alleged breach can be logged as a planning enforcement case the complainant must provide their name and full contact details including their address or/and email address, as well as the address of the property to which the allegation relates. This must be provided as the Council may be required to contact the complainant for more detailed information during the investigation of the case. Where no contact details are supplied, the alleged breach will not normally be logged as a case. Where there are only minimal details provided, the complainant will be asked to provide more information before the case can be properly registered and investigated.

5.3 Methods of submitting an alleged breach

5.4 An alleged breach should usually be submitted in writing, preferably online through the 'Enforcing Planning Rules' section of the Council's planning web pages (www.harborough.gov.uk/enforcement) by using the online planning enforcement complaint form 'planning enforcement complaint'. This is the most efficient and effective way of reporting a breach of planning control. However, where it is not possible to do this, written allegations can be submitted to the Council by letter to Planning Enforcement, The Symington Building, Adam & Eve Street, Market Harborough, LE16 7AG, or email to planningenforcement@harborough.gov.uk. Providing all relevant information is supplied the case will be registered.

5.5 The Council's Contact Centre is usually the first port of call if contact is made by telephone. ~~Alleged breaches can also be made in person at the Council's offices. The planning enforcement team have a duty planning enforcement officer that can be contacted via the Contact Centre should a member of the public wish to speak to an officer directly.~~ Although complainants are encouraged to submit written allegations, if an alleged breach is received by phone or in person at the Council's offices, it is important that as much detailed information as possible is given to the officer, including full contact details of the complainant. To ensure all relevant information is provided, the receiving officer will use the planning enforcement complaint online form to guide them.

5.6 All complaints relating to breaches of planning control will be investigated and treated confidentially by officers of the Council. The party under investigation or other members of the public will not be allowed access to the enforcement complaint file under any circumstances. In some circumstances the party under investigation will have strong suspicions about the identity of the complainant(s) but the Council will not comment on these. Anonymous allegations will not ~~normally~~ be investigated

5.7 If there are enforcement matters at any time that have to be considered by a Council Committee these will be considered after the press and public have been asked to leave the meeting and will be treated as an 'exempt' item.

5.8 The Council is under a legal obligation to maintain a register of land or properties which are, or have been, the subject of an enforcement notice, and to identify these in response to local searches.

5.9. Logging an alleged breach

5.10 Within 3 days of receiving the requisite details of an alleged breach of planning control, the case will be logged on the planning enforcement database and the complainant acknowledged. The case will be assigned a priority and a case officer in accordance with paragraph 5.11 of this document.

5.11 The priority of a case will be assigned on a case by case basis and will usually follow the following classification.

1. Top Priority Cases - where works are being carried out which will cause irreparable harm / damage.

Examples:

- a) Unauthorised works to a listed building;
- b) Lopping or felling of protected trees.

2. High Priority Cases - where works or uses are causing a significant and continued harm to amenity, time sensitive breaches or development that compromise safety.

Examples:

- a) Unsafe vehicular access;
- b) Unauthorised development where the time-limit for taking action will expire within the next 6 months;
- c) Noise from an unauthorised use disturbing a number of residential properties at anti-social times;
- d) ~~Unauthorised buildings~~ **Unauthorised buildings**, uses or non-compliance with conditions which have the potential to cause serious long-term damage to the environment, which unless positive action is taken quickly are likely to become more acute; and
- e) New residential development in the countryside.

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3. Standard Priority Cases – new structures or changes of use having limited degree of disturbance to local residents or damage to the ~~environment~~ **environment**, and which do fall within the foregoing priority groups.

Examples:

- a) The unauthorised erection of an extension;
- b) small-scale domestic alterations, walls, gates, outbuildings, satellite dishes;
- c) Developments for which it is likely that planning permission would normally be granted;
- d) Minor deviations from approved plans; and
- e) Advertisements which are not compromising highway safety or visual harm.

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5.12 Acknowledging an alleged breach

5.13 Once the case is logged on the database, a ~~letter or email~~ **(or letter)** acknowledgement will be sent to the complainant within 3 working days of receipt of the complaint. The acknowledgement may ask for additional information and will include the case officer contact details to allow the complainant to contact the officer directly. In some ~~cases~~ **cases**, the acknowledgement may also confirm that the works do not, or are unlikely to, require planning permission, or that they are

~~acceptable~~ acceptable, and that formal enforcement action is unlikely to be expedient.

5.14 Resolving a breach of planning control

5.15 Every enforcement case is different and as such there are likely to be differences in the way that each case is investigated. Nonetheless, cases will normally follow the process outlined in Annex 2 of this plan.

5.16 Initial site inspection

5.17 Once the case has been logged and assigned a priority, an enforcement officer may need to visit the premises, if deemed necessary ~~in order to~~ help further establish the exact nature of the alleged breach. In instances where a site visit is needed, the officer will visit the site as soon as is practicable having regard to the priority of the case set out in the table below.

Priority	Visit target
Top priority cases	Within 1 working day
High priority cases	Within 5 working days
Standard priority cases	Within 10 working days

5.18 Power to enter land

5.19 Due to the nature of planning enforcement work, it may not be appropriate or possible to arrange the initial visit in advance. As such the investigating officer will not normally give advanced warning of a site visit. This may mean that access cannot be gained on the first attempt and consequently it may take longer than the initial site visit period to conduct an effective site visit. Denying access to the investigating officer is an offence and, although the officer will seek the co-operation of the owner/occupier of the premises through discussion or service of a Notice of Intended Entry (see Annex 4); the Council may seek a warrant to enter the land being investigated.

5.20 Establishing a breach of planning control

5.21 Although some breaches of planning control are immediately apparent upon the initial site visit, other breaches may be more difficult to ~~identify~~ identify, and the investigation stage may take longer. An unauthorised material change of use and a breach of condition both become lawful, and therefore immune from enforcement action, after a continuous, uninterrupted period of ten years. An exception to this ten year rule applies to the unauthorised creation of a new residential unit which becomes immune from formal enforcement action after a continuous uninterrupted period of four years. Unauthorised operational development (e.g. building works) becomes lawful four years after it is substantially completed. Consequently, it may be necessary to conduct detailed investigations into the history of the site if the time periods involved are not initially clear. This may result in a case becoming re-prioritised.

5.22 The Localism Act which came into effect on the 6th April 2012, introduced a new enforcement power in relation to the time limits referred to in para. 5.21 above. The

new powers allow Councils ~~the possibility~~ to take action against concealed breaches of planning control even after the usual time limit for taking action has expired. This new procedure allows Councils to pursue a Planning Enforcement Order (PEO) through the Magistrate's Courts where a breach of planning control has been deliberately concealed in an attempt to circumvent the "4 year rule" or the "10 year rule" which would normally provide immunity from enforcement action. The use of PEO's ~~will depend on whether or not~~ whether there are other remedies available to the Council to deal with a breach of planning control but also on whether or not any "concealment" was "deliberate".

5.23 Further to this, a change of use may be non-material, incidental, or ancillary which may not require planning permission. Certain changes of use and types of operational development may constitute 'permitted development' and therefore will not require planning permission. Within this context, establishing ~~whether or not~~ whether a breach of planning control has actually occurred may require detailed measurements and calculations and/or detailed information regarding the nature of the use of the premises. This can take time to conduct but the Council has ~~a number of several~~ tools at its disposal to aid in obtaining the necessary information:

- The owner of the premises may be invited to ~~submit an application~~ apply for a Certificate of Lawful Development for works that have been completed or an existing use. The applicant of such an application must provide evidence to demonstrate that on the balance of probability the use or development is lawful.
- The Council may issue a Planning Contravention Notice (PCN) which requires those served to provide ~~certain information in order to~~ help establish whether a breach of planning control has occurred. a breach or not.
- The Council may issue notices under s330 of the Town and Country Planning Act 1990, as to the ownership and use of the premises.
- The Council may utilise their powers of entry.

5.24 Informal resolution

5.25 It is important to bear in mind that it is not an offence to carry out development without first obtaining planning permission (with the exception of activities outlined in paragraph 4.3 of this plan). The Planning Practice Guidance ~~'Ensuring Effective Enforcement'~~ sets out why early engagement is important.

5.26 When investigating an alleged or apparent breach of planning control, a crucial first step is for the local planning authority to attempt to contact the owner or occupier of the site in question. Section 330 of the Town and Country Planning Act 1990 provides local planning authorities with the power to require information as to interests in land. Where it is possible, early engagement is ~~vital~~ important to establish whether:

- There is a breach of planning control and the degree of harm which may be resulting
- Those responsible for any breach are receptive to taking action to remedy the breach.

5.27 Ultimately, the purpose of the planning enforcement regime is to mitigate the harm to amenity or other interests (~~e.g. e.g.~~ highway safety) that may result from unauthorised development. It would be unreasonable for the Council to issue an enforcement notice solely to remedy the absence of a valid planning permission. Where the Council does issue a notice for this reason, it would be at risk of an award against them for the appellant's costs in the event of an enforcement appeal.

Consequently, where it appears that there is a reasonable prospect that planning permission would be granted for the development, (with or without planning conditions) the Council will encourage the party responsible for the development to submit a retrospective planning application.

5.28 When considering a retrospective application for the retention of the unauthorised development or use, the full planning considerations will be ~~taken into account~~considered. Planning considerations are considered in the context of the public interest and not personal or private interest. ~~Consequently~~Consequently, planning permission not being sought prior to the development being carried out will not influence the Councils decision making and each case will be determined on its own merits.

5.29 With these points in mind the Council will 'categorise' each case as follows:

Category 1 No breach of planning control - to improve efficiency it is essential to close these cases as quickly as possible. The target time for determining whether there has been a breach is a maximum of eight weeks from receipt of the complaint.

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Category 2 Breach of planning control, but not expedient to take action - ~~even~~ where it does not intend to pursue enforcement action in relation to a breach, the Council may still invite the perpetrator to rectify matters or make an application to regularise the position. The file will be closed once the Council has made the invitation regardless of ~~whether or not~~whether the perpetrator rectifies the breach or makes a planning application. This does not imply that subsequent breaches will not be ~~investigated~~investigated, and action taken where appropriate.

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Category 3 Breach of planning control, expedient to take action - arrangements for these cases should mirror those for Category 2 breaches, except that the case remains open after the perpetrator has been invited to make an application to regularise the breach. After allowing a three-week period for the submission of an application, the Council may take further action if a valid application has not been received or the breach has not been regularised. This could ultimately result in formal enforcement action occurring.

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Category 4 Serious breach of planning rules, early action needed - in ~~such~~ cases the invitation to make a planning application is dispensed with because it is highly unlikely to receive approval, although if one is made the Council may hold action in abeyance whilst it processes and considers the application. Unless the perpetrator rectifies the breach, the Council will move quickly to formal enforcement action. In short, it will 'fast track' Category 4 cases.

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5.30 Recommending a case for closure

5.31 Before closing a case the enforcement officer must justify the reasons for closure. If the recommendation to close the case is agreed, the case will be closed on the Council's database and the complainant updated setting out the reasons for the Council's decision.

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5.32 Where there is a breach of planning ~~control~~control, but it is not considered expedient to take enforcement action, the complainant will be informed of the Council's decision with a full explanation as to the reason for closure.

5.33 Where a decision is made to close a case, the Council will not write to the perpetrator to say that enforcement action will not be taken where the perpetrator is unaware that a complaint has been made. In instances where the perpetrator

wishes to obtain a formal confirmation that the works are acceptable, they will be advised to apply for retrospective planning permission or a Certificate of Lawfulness for an existing use or works, depending on the circumstances of the case.

5.34 Further, where investigations establish that works or a use are “permitted development”, the owner/occupier can submit an application for a Certificate of Lawfulness, although it is important to note that this type of application is not a requirement but does provide formal confirmation from the Council that the development described in the application is lawful and does not require planning permission.

5.35 Notifying complainants

5.36 Where an investigation has been resolved, the Council will inform the complainant of its intention to close the case, stating the reasons for doing so. This can be communicated by letter, email or by telephone, and the enforcement data base updated accordingly.

6. Formal Action - Considerations prior to taking formal enforcement action

6.1 Several factors must be taken into consideration prior to any formal enforcement action

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6.2 Human Rights Act 1998

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When deciding whether or not to take enforcement action, the Council will pay due regard to the Human Rights Act 1998 and, in particular, to the requirement not to act in a way which is incompatible with any relevant Convention rights which are the right to a fair trial, right to respect for private and family life, prohibition of discrimination and protection of property. These rights are qualified rights which means that, when considering enforcement action, the Council will balance the rights of those who may be in breach of the planning legislation against those affected by the breach, including the community at large

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6.3 Public Sector Equality Duty (Equality Act 2010)

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A public authority must, in the exercise of its functions, have due regard to the need to—

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a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act

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b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

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c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it

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6.4 For the purposes of the provisions of this Section, pregnancy and maternity, age, gender reassignment, disability, race, religion or belief, sex and sexual orientation are all protected characteristics. That question in every case is whether the decision maker has in substance had due regard to the relevant statutory need, to see whether the duty has been performed.

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The Council's obligation is to have due regard to the need to achieve these goals in making its decisions. Due regard means to have such regard as is appropriate in all the circumstances.

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6.5 The Council must consider if formal enforcement action to remedy harm is wholly appropriate and proportionate. If a breach of planning control has occurred and requires further investigation, then the subsequent investigation must be proportionate. In any event, if human rights or public sector equality rights are potentially affected, the Council must consider that the public interest factors outweigh any potential interference.

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6.16 ~~Se~~Taking formal action – serving notices

6.27 If informal negotiations fail or a retrospective planning application is refused, the Council will consider the expediency of taking formal action by serving a notice. The case officer will complete an enforcement report with a recommendation to take formal enforcement action, setting out the planning considerations and assessing the level of harm that is caused by the development. The action has to be agreed by various officers of the ~~Council, and~~Council and signed by the Council's authorised officer ~~Corporate Director~~ under the Council's delegated procedures. The ward Member will be advised of the proposal to take formal action. Once a notice has been served, the ward Member and Parish Council will be sent a copy of the notice and will be kept informed at key stages throughout the investigation thereafter. Those residents most likely affected by a development will also be informed of any enforcement notice appeals so that they have the opportunity to make representations to the Planning Inspectorate.

6.38 A record of all notices are kept on an enforcement register ~~and also recorded on the Land Charges Register~~. It should be noted that enforcement cases where no formal action has been taken (or yet to be taken) will not show up on land searches. The enforcement register is a public record and can be viewed on request.

6.49 Where enforcement notices are appealed against, the notice will be held in abeyance pending the outcome of the appeal. The appeals process is often a lengthy one and can take several months to resolve.

6.5-10 Prosecutions and Injunctions

6.611 Where there is a breach of the requirements of a notice, the party concerned is guilty of an offence and the Council can initiate prosecution proceedings. It may also be necessary to prosecute for offences such as unlawful advertisements, unlawful works to trees in a conservation area or the subject of a Tree Preservation Order, conservation area and listed building breaches and also for non compliance with Planning Contravention Notices, and s330 notices.

6.712 In initiating prosecution proceedings, the Council will have regard to the Crown Prosecution Service's tests of prosecution:

- i) Does the prosecution have a realistic prospect of success?
- ii) Is it in the public interest to prosecute?

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In certain ~~eases~~cases, it may be appropriate to seek an Injunction. This may include situations such as multiple prosecutions that have not resulted in compliance with the notice and ongoing destructive works to a listed building, or the continued ~~non-compliance~~ non-compliance with a notice.

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7. Working with other regulating authorities and external agencies

- 7.1 There is often overlap in the investigation of breaches of planning control between other regulating authorities and agencies ~~e.g.e.g.~~, the County Council, Environment Agency, the Police and other Council services. In all cases that potentially involve the other regulatory authorities or agencies, consultations and discussions will take place to see which body is in the better position to lead the investigation and, if necessary, take action.
- 7.2 Where an activity does not fall within the remit of the Council's planning enforcement team to investigate, the investigating officer will refer the issue to the relevant body and advise the complainant accordingly. Sometimes the responsibilities of two or more authorities may overlap and in these situations the Council will seek to work together with those other agencies. Where this is the case, a course of action will be ~~determined~~determined, and the complainant advised accordingly along with relevant contact details.

8. Disclosure of information

- 8.1 The Council will treat all complaints received in confidence. All personal information will be stored, ~~handled~~handled, and processed in accordance with the requirements of the Data Protection Act 1998.
- 8.2 The nature of planning enforcement work means that investigations may ultimately result in court proceedings. As such, it may sometimes be necessary to withhold certain information from both the complainants and the perpetrator. The Council will always endeavour to provide as much information as possible, however the extent of information disclosed will inevitably vary from case to case. The Council will have regard to the requirements of the Freedom of Information Act 2000 in providing disclosures.

9. ~~Proactive compliance~~Monitoring of conditions

- 9.1 In addition to the service's role in reacting to complaints regarding alleged unauthorised developments or breaches of condition, the Council is committed to carrying out some proactive monitoring of large scale developments to ensure compliance with conditions, planning permissions and other consents where it is appropriate and as resources permit.

~~As well as investigating alleged breaches of planning control the Council will as resources permit, undertake pro-active monitoring of planning conditions. This will be achieved by monitoring a random sample of approved applications to ensure that the works are being carried out in accordance with the attached conditions.~~

10. Public Open Spaces, their management and the Council's planning enforcement role

- 10.1 The Council's adopted Open Spaces Strategy 2021 (OSS), sets out at Paragraph 9.21 to 9.33 the management of Public Open Space in large developments where planning permission has been granted. It refers to the importance of an approved Landscape Management Plan (LMP) for the long-term management of public open space, and that this should be in place before the transfer of the public open space to the managing organisation, or in some cases, the Parish Council.

The OSS goes onto say that:

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“where the management organisation or other managing body does not adhere to the maintenance objectives and operations outlined in the Landscape Management Plan, issues should be escalated within the relevant organisation”. This process is outlined in appendix E of the OSS.

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10.2 Importantly, at paragraph 9.33, the OSS states that it is the management organisation who are responsible for dealing with all ongoing maintenance and whom residents have a contractual agreement with, and that the Council's planning enforcement team should only be contacted if there is a serious breach of planning control and as a last resort. Notwithstanding this, the Council's planning enforcement team will intervene where the non-compliance of a LMP is having a significant detrimental impact on the residential and visual amenity of the area.

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10.11. Verbal/physical abuse towards officers

10.1.1 The Council is committed to ensuring that its officers ~~are able to~~can carry out their work safely and without fear and where appropriate will use legal action to prevent abuse, harassment or assaults on officers.

12 Complaints about the Council's Planning Enforcement Service

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12.1 For those who are not satisfied about the level of service received from the Planning Enforcement Team, they should in the first instance raise their concerns with the Planning Enforcement Team Leader. If this does not resolve the matter, the concerns can be taken further through the Council's Complaints Procedure, details of which can be found using the following link:

https://www.harborough.gov.uk/forms/form/64/make_a_complaint

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12.2 If the Council's response is still unsatisfactory, the Local Government Ombudsman (LGO) can be contacted. Once contacted, the LGO will determine if the concerns raised will be investigated, and if so, will publish the outcome of their investigation. It should be noted that the LGO will only investigate a complaint if the Council's internal complaints process has first been completed.

Review

This plan will be reviewed whenever there is a significant change in legislation, national -or local policy.

Contacts

Planning Enforcement contact details:

Development Management,
Planning Enforcement,
The Symington Building,
Adam and Eve Street,
Market Harborough,
Leicestershire,
LE16 7AG.
T: 01858 828282
E: planningenforcement@harborough.gov.uk

W. www.harborough.gov.uk/planning

Annex 1: The Regulators Code

Local authorities are required by the Regulators' Code to publish a clear set of service standards, including their enforcement policy, explaining how they respond to non-compliance. This is an important document for regulators in meeting their responsibility under the statutory principles of good regulation, and to be accountable and transparent about their activities. The Regulators' Code promotes proportionate, ~~consistent~~consistent, and targeted regulatory activity, which includes taking appropriate action where non-compliance is identified, based on the following principles:

Proportionality

Any action that is taken will relate to the seriousness of any breach.

Consistency

The Council will adopt a consistent approach to dealing with breaches of planning control. National and regional best practice will be followed through research, and communication with other authorities. The Council will share information with other regulatory bodies, subject to data protection legislation and confidentiality. The Council will ensure that planning enforcement is delivered in a fair, ~~consistent~~consistent, and equitable fashion.

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Transparency

The Council will make every effort to help people understand what the law requires of them and make clear what needs to be done, and not done, to achieve compliance. The Council will also make clear what people should do if they are not happy about any action taken or a decision not to take action.

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Targeting

Enforcement efforts will be directed against those whose activities pose the most serious risks or create the most damage to the public interest and those who have a history of non-compliance.

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Openness:

The planning enforcement service will provide information in plain language and disseminate the information as widely as possible. Planning enforcement advice will be clear, confirmed in writing and clearly distinguish between legal requirements and best practice. ~~Progress updates on planning enforcement will be reported to the Council's Planning Committee on a three monthly basis.~~

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Helpfulness

Complainants and Councillors will be kept informed of progress with investigations and actions taken. All communications will be responded to as promptly as possible and officer contact details provided.

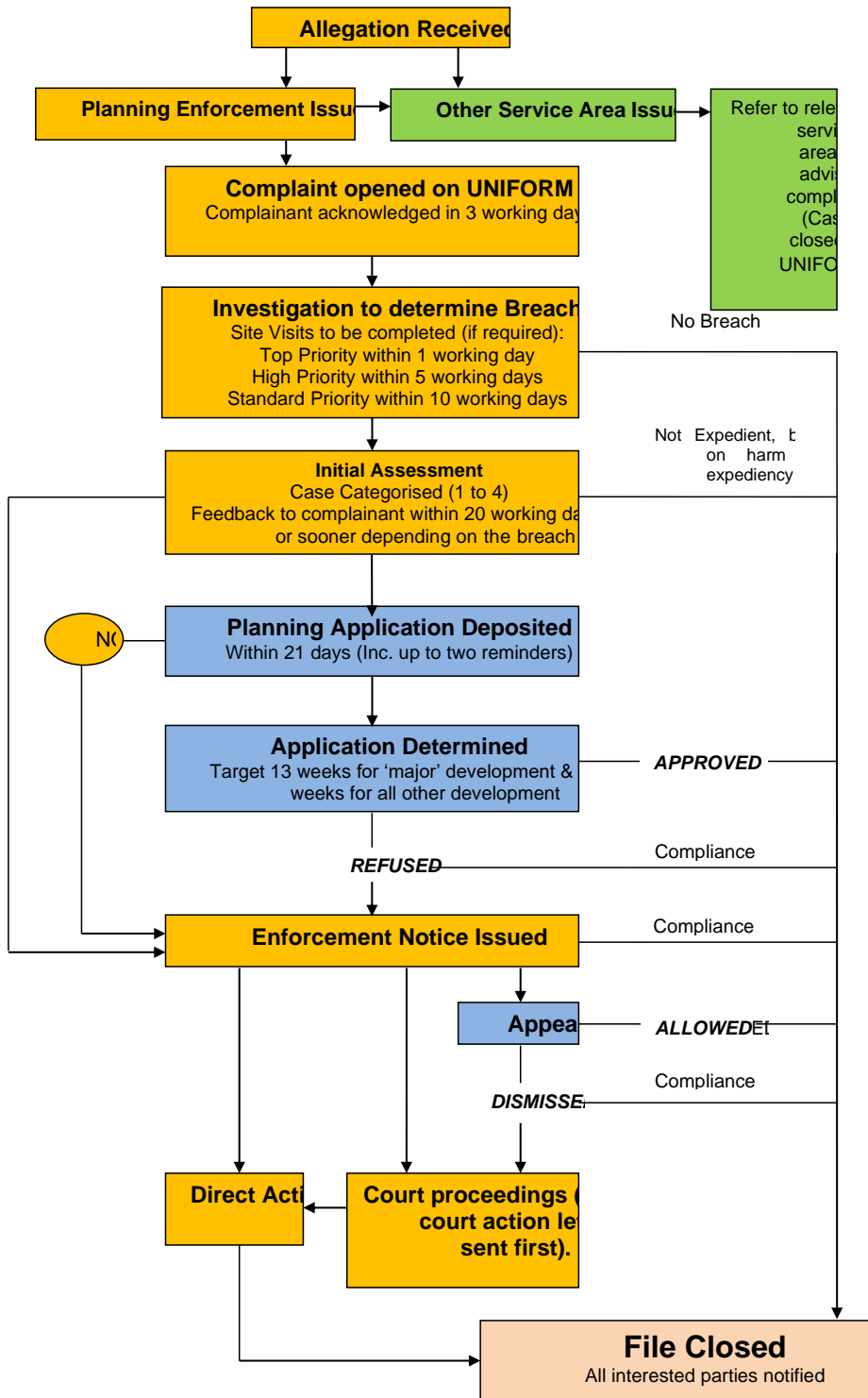
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Procedures:

The procedures for carrying out the planning enforcement function are set out in this LEP.

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Annex 2: The Enforcement Process



Annex 3: GLOSSARY OF ENFORCEMENT TERMINOLOGY (in alphabetical order)

A

Amenity

The word Amenity is not defined in legislation but in planning terms it is commonly considered to refer to the overall quality and character of the area. This is made up of different factors such as:

- Types of land uses
- Quality of buildings
- Juxtaposition of buildings
- The provision of open land or trees; and
- The inter-relationship between all the different elements in the environment. For example, an area with well-maintained houses that give occupants space and privacy would be said to have better amenity than houses that are overlooked by their neighbours or are located next to a noisy factory

Specifically residential amenity may take into consideration privacy – whether there is overlooking over and above that which already exists, any overbearing impact, or overshadowing or loss of light.

There is no right in planning law to a particular view and the Council cannot take into consideration loss of monetary value of a property.

Authorised Development

Development, including the use of land that has the necessary planning permission to take place. Planning conditions will be attached to the permission to control the development

B

Breach of Planning Control

Development that is not in compliance with the terms of a planning permission or development that is unauthorised (for example, it does not have planning permission)

C

Certificate of Lawfulness of Existing Use or Development

Under planning law, landowners can apply for a Certificate that confirms that the use of the land or development established on the site, is lawful; for example, because it has been there for a long time. For uses it is 10 years with the exception of residential which is 4 years. For works (operational development) it is 4 years

Complainant

The person reporting a potential breach of planning control.

Compliance

Development should accord (that is, be in compliance) with the terms of the planning conditions attached to the necessary planning permission. With regard to compliance following the service of a Notice, it will be the specified time given following on from when the notice takes effect.

D **Discretionary**

There is no statutory requirement for the Council to take enforcement action against alleged breaches of planning control. Enforcement action is based on planning merit which requires a planning judgement as to whether or not formal action is appropriate. In some cases, the Council may decide that enforcement action will not be taken and that an alternative approach is more appropriate (e.g. a retrospective application, further negotiation, no further action etc).

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E

Enforcement Action

Must only be taken when the breach of planning control is unacceptable on planning grounds and it is in the public interest to take action. The precise form of any action taken against a breach of planning control is within the discretion of the District Council, and can be subject to Judicial Review. Informal action is preferable and involves resolution through negotiation and may lead to a retrospective planning application to 'regularise' the activity. Formal action, which must be appropriate and proportionate, involves the use of a range of enforcement 'tools'(see Annex 4),including breach of condition notices, enforcement notices, temporary stop notices, stop notices, injunctions, and direct action.

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Enforcement Investigation

Process of gathering evidence to determine whether a breach of planning control has taken place or is taking place. It involves the use of a range of tools including statutory power to enter land, planning contravention notices, and requisition notices (see Annex 4)

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Expedient/Not Expedient

It must be remembered that the Council does not have to take enforcement action even if there is a breach of planning control. Enforcement action is Discretionary. In deciding whether or not to take enforcement action the Council will:

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- Balance the seriousness of the breach of planning control
- Balance the level of Harm that it causes
- Consider the likely chances of success in pursuing enforcement action against the seriousness of other enforcement complaints and the available resources

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Having weighed up these factors the Council will make a decision as to whether it will take action i.e. whether it is Expedient to take action

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H

Harm

Planning harm is the collective term used to describe the negative impacts of a development, and identified harm will need to be proven before formal action is taken.

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Factors that contribute to an assessment of planning Harm include:

- Visual impact, change in character, ecology
- Privacy, overbearing, sunlight/daylight, noise/harm (NB latter may also be actioned under the Environmental Protection Act)
- Increase in traffic/safety
- Undesirable precedent

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- The cumulative effect on an area of the planning breach.

O

Over-enforcement

Where the enforcement action taken is disproportionate to the harm caused. Maladministration could arise in such cases

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P

Permitted development (PD)

Under planning law, some development is 'permitted' and does not require planning permission from the relevant local planning authority. Reference will be made to the General Permitted Development Order (GPDO) which sets out those areas where PD rights exist subject to conditions

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Planning Conditions

Detailed clauses attached to a planning permission that specify what is permitted and what is not permitted through the granting of the permission. Used to control, for example, the impact of the development on the environment and on local amenity.

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R

Retrospective Planning Application

A planning application that is submitted for approval after the development has commenced or taken place. It may be used to 'regularise' unauthorised development that has come to light following an investigation. A retrospective application may be encouraged by the District Council where the application is likely to be approved with conditions in order to avoid the need for formal enforcement action.

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U

Unauthorised Development

Development, including the use of land that does not have the necessary planning permission to take place, or is not considered to fall under Permitted Development.

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Under-enforcement

Where the Council decide that formal action is not required to remedy the whole of the breach of planning control, this is known as "under enforcement".

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Annex 4: Types of Enforcement Action – The Tools

Enforcement Action

The Town and Country Planning Act 1990 (as amended) defines taking formal "enforcement action" as the issue of an enforcement notice or the service of a breach of conditions notice. Failure to comply with either constitutes an offence. There are also a number of supplementary powers granted to the Council as Local Planning Authority (LPA) that allow other types of notice to be served. Failure to comply with these notices is also an offence.

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1. Enforcement Notices

If it is expedient to do so, an enforcement notice may be served where the LPA believes there has been a breach of planning control involving an unauthorised material change of use, operational development or breach of a condition. The enforcement notice will state the reasons for action being taken and specify the steps which the LPA require to be taken in order to remedy the breach. There is a right of appeal by recipients of the notice to The Planning Inspectorate against an enforcement notice.

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2. Breach of Condition Notices (BCN)

A BCN may be served where a condition attached to a planning permission is not being complied with. The BCN will specify the steps which the LPA require to be taken in order to secure compliance with the condition as is specified in the notice. There is no right of appeal against a BCN to the Planning Inspectorate; however recipients of such notices can appeal in the magistrate's court.

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3. Stop Notices

In certain cases, a stop notice can be served in order to cease an unauthorised activity on the land. A stop notice can only be served at the same time as, or after, the service of an enforcement notice. There is no right of appeal against a stop notice, only the enforcement notice to which it is attached. The LPA will be at risk of compensation if it is used in inappropriate cases.

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4. Temporary Stop Notices (TSN)

In certain cases, a TSN can be served before an enforcement notice has been served in order to cease an unauthorised activity (a use and/or a building operation) on the land. These notices remain in effect only for a maximum of 28 days.

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5. Section 215 Notices

Where the condition of land is adversely affecting the amenity of the area, the LPA may serve a notice under s215 of the Town and Country Planning Act 1990 requiring the proper maintenance of land. The s215 Notice will specify the steps that the LPA require to be taken in order to remedy the condition of the land. There is a right of appeal in the Magistrates' Court against a s215 Notice.

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6. Tree Replacement Notices

Where a protected tree is removed, uprooted, or destroyed without prior consent, the LPA can serve a tree replacement notice requiring, within a specified period, the replanting of a tree of a specified size and species. There is a right of appeal against a Tree Replacement Notice.

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7. A Planning Enforcement Order

This is a new provision introduced in the Localism Act 2011 which came into force in England and Wales on the 6 April 2012. This measure is used where a breach of planning control has been concealed, and where the LPA can show 'deliberate concealment' of a breach of planning control, the LPA may apply to the Magistrates Court for a planning enforcement order (PEO)

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8. Planning Contravention Notices (PCN)

Where it appears as though there may have been a breach of planning control in respect of any land, the LPA may serve a PCN requiring information about activities on land. There is no right of appeal against a PCN and failure to respond is an offence.

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9. Section 330 Notices (Requisition Notice)

An investigation tool that requires the person on whom it is served, to provide details about land-use/ownership, and may be the precursor to the issue of a formal notice. It also warns the recipient that enforcement action is being considered, and is often enough to satisfactorily resolve the breach of control, the latter is also applicable to the service of a PCN.

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10. Discontinuance Notices

The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 allows the LPA to serve a discontinuance notice against any advertisement, or the use of any advertisement site, which normally has the benefit of deemed or express consent. There is a right of appeal against a discontinuance notice.

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11. Notice of Intention to Inspect

This notice is formal confirmation of the LPA's intention to enter land without a warrant. If entry to the land (or any part of it) is refused, that person obstructing the officers will be committing an offence and the LPA will obtain a warrant to gain entry. There is no right of appeal against a notice of intended entry.

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12. Removal Notice

This notice under section 225A of the 1990 Act, introduced by the Localism Act, gives all LPAs the ability to remove and then destroy any unauthorised 'display structure' used for the display of advertisements in their area, and reclaim the costs of doing so.

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'Display structure' is defined by s.225A as:

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- a hoarding or similar structure used, or designed or adapted for use, for the display of advertisements;
- anything (other than a hoarding or similar structure) principally used, or designed or adapted principally for use, for the display of advertisements;
- a structure that is itself an advertisement; or
- any of the fitments used to support the display

13. Action Notice

This notice was introduced by the Localism Act under section 225C of the 1990 Act, and gives power to all LPAs to serve an 'Action Notice' where they have reason to believe that there is a persistent problem with the display of unauthorised advertisements on a surface of: any building, wall, fence or other structure or erection; or any apparatus or plant in their area, setting out the reasonable steps required to be taken not less than the end of 28 days from the date of the notice for the removal of the advertisements.

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If the Action Notice is not complied with, the LPA can take these actions itself and recover the costs (save where the surface is a surface of a dwelling house). Formatted: Indent: First line: 0 cm

14. Prosecution

The Council will consider commencing prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the above Notices where the date for compliance has passed and the requirements have not been complied with. Formatted: Indent: First line: 0 cm

The Council will also consider commencing prosecution in the Courts where unauthorised works have been carried out to TPO trees or trees in a Conservation Area, as well as unauthorised works to listed buildings, demolition in a Conservation Area, advertisements or where the recipient of a Planning Contravention Notice or Requisition for Information has failed to provide a response within the prescribed time period or supplied false or misleading information. Formatted: Indent: First line: 0 cm

Before commencing any legal proceedings the Council must be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest. Formatted: Indent: First line: 0 cm

15. Injunction

Where an enforcement Notice has not been complied with and a prosecution is not considered expedient or previous prosecution(s) have failed to remedy the breach of planning control, the Council will consider applying to the Court for an injunction. Such action will only normally be considered if the breach is particularly serious and is causing or likely to cause exceptional harm. Formatted: Indent: First line: 0 cm

16. Direct Action

Where any steps required by an Enforcement Notice have not been taken within the compliance period (other than the discontinuance of the use of land), or where any steps required as part of a Section 215 (Untidy Land) notice have not been taken within the prescribed timescales, the Council will consider whether it is expedient to exercise its power under Section 178 and 219 of the Town and Country Planning Act 1990 (as amended) to: (a) enter the land and take the steps; and (b) recover from the person who is then the owner of the land any expenses reasonably incur Formatted: Indent: First line: 0 cm

Annex 5: Planning Enforcement Service Standards

PLANNING ENFORCEMENT SERVICE STANDARDS*	STANDARD-TARGET
Cases responded to within target dates: Top priority cases _____ Within 1 working day High priority cases _____ Within 5 working days Standard priority cases _____ Within 10 working days	90%
Planning Enforcement Cases closed within 8 weeks of registration w where no formal action is deemed necessary or appropriate.	80%
Enforcement complaints registered and acknowledged within 3 days of receipt Serve Enforcement Notice within 28 days of instruction	100 90%
Complainants updated on progress of planning enforcement -investigations within 20 days of receipt of complaint	90 80%

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* NB – all of the time periods identified are working days.

APPENDIX B

Protocol for Public Open Space (POS) in the Planning Process

Acronyms –

- POS – Public Open Space
- DMT – Development Management Team
- PO – Planning Officer
- SMDM – Service Manager Development Management
- NGSpO – Neighbourhood and Green Spaces Officer
- PCO – Planning Contributions Officer
- HDC - Harborough District Council
- LPA - Local Planning Authority
- LMP - Landscape Management Plan

▪ Referenced Documents

[Open Spaces Strategy 2021](#)

[Provision for Open Space Sport and Recreation 2021](#)

[The Corporate Property Strategy, Supplementary Policy and Procedures Disposal & Acquisition Procedure provides a mechanism for adoption of open space. Appendix C, Section 5:](#)

Step 1 Pre-planning advice – Occurs before planning application received by HDC. Identifies and addresses issues early. Advice given concerning on site POS or off site POS contributions if required; however, on site POS provision is preferred. Pre planning advice is confidential in most cases.

- Developer submits concept landscape proposals received by DMT.
- NGSpO consulted by DMT/PO on concept landscape proposal.
- S106 contributions are calculated for the development by NGSpO (includes on site POS and off site POS contributions – 7 typologies)
- POS requirements identified during pre-planning advice phase by NGSpO
- POS requirements supplied by NGSpO to DMT and developer/land owner

- On site POS is not adopted by Harborough District Council

Moves to Step 2



Step 2 Detailed Design – Occurs as part of planning application after consent for development is secured.

- PO conditions detailed landscape scheme as part of planning consent (Landscape Scheme to include Plans, specifications and Landscape Management Plan (LMP)).
- Developer submits detailed landscape scheme in order to discharge planning condition.
- A LMP should be produced prior to the transfer of POS to a third party (ManCo, Parish or residents Management Company). A LMP should provide the following minimum information:
 - Desktop review of the site including context, designations and history;
 - Site specific information including ecology, arboriculture and public rights of way;
 - Aims and objective for the management of the Site;
 - Management organisation who will be responsible for the POS post-practical completion;
 - Funding of long term maintenance of the Site; and
 - Procedure of review and monitoring of the POS and the LMP.
- NGSpO reviews detailed landscape proposal considering site specific requirements. Will either recommend agreement to proposal or negotiate through the PO an acceptable detailed landscape proposal.
- If not previously provided at Pre Application stage, S106 contributions are calculated for the development and provided to the PO
- PO discharges relevant planning condition against detailed landscape proposal and forwards a copy of the S106 to the Planning Contributions Officer (PCO) who lodges it on the Section 106 database

Moves to step 3



Step 3 Implementation – Developer and their appointed landscape company complete the onsite POS (may be phased).

- Developer lays out POS in accordance with accepted detailed landscape proposal.
- Developer seeks approval from LPA for POS at 'Practical Completion' by inviting NGSpO to inspect the POS.
- Developer submits with the invitation; a PDF drawing clearly illustrating the total area of the overall development and the calculated area of the relevant POS
- NGSpO inspects POS at the request of the developer and provides a report for the PO detailing whether the POS is satisfactorily complete or whether remedial action is required to sign off at Practical Completion stage.
- When signed off for Practical Completion the POS is maintained by the developer for a 12 month period in accordance with the LMP. The developer maintains POS up to the stage where they wish, or are required under Section 106 Agreement (Step 4)
- N.B Most agreed landscape schemes require that both implementation and management of landscape be professionally monitored by the architect or other landscape professional as part of completion of the development, in order to help the satisfactory implementation of on site POS and smooth operation of the adoption process to a suitable third party (ManCo, residents ManCo or Parish Council)



Inspection fails - remedial works identified and carried out by developer. Developer applies for re-inspection.



Inspection passes - POS found to be substantially in accordance with agreed detailed landscape scheme. PO issues Practical Completion Certificate to Developer or Owner. **(Moves to Step 4)**



Step 4 Management – Occurs once practical completion certificate is issued by PO.

- Where no management period has been secured under the Section 106 Agreement the Developer or Owner will transfer POS to a ManCo or Parish Council
- When a management period has been secured the Developer maintains the POS in accordance with the LMP for 12 months
- After 12 months the developer must contact the NGSpO and/or PO to sign off the POS for 'Final Completion'
- The Developer may be required to provide a post installation inspection certificate for play areas or other structures/facilities associated with the POS.

Inspection fails - remedial works identified and carried out by developer, apply for re-inspection.

Inspection passes - POS found to be substantially in accordance with agreed detailed landscape scheme. PO issues Final Certificate to Developer or Owner. **(Moves to Step 6)**

Step 5 Legal transfer – Occurs once Landscape maintenance transfer inspection passed, or after Practical Completion Certificate if no management period agreed.

- Developer transfers the POS to a ManCo or other third party for maintenance

Note: The Council does not ordinarily adopt Public Open Space for maintenance.

- The Corporate Property Strategy, Supplementary Policy and Procedures Disposal & Acquisition Procedure provides a mechanism for adoption of Public Open Space. Appendix C, Section 5: Adoption of Public Open Space of the Corporate Property Strategy outlines the criteria under which HDC will adopt Public Open Space. The Council will not adopt areas of Public Open Space unless one of the following applies:
 - A commuted payment is available from the developer in accordance with extant Planning Guidance for developer contributions;
 - The area is of interest to a charitable trust or a Parish Council which will maintain the land; or
 - The Council will utilise an Assessment Toolkit to determine whether the land will be accepted by the Council as shown in the Appendix. A score below 30 is likely to be considered unsuitable for adoption.

Step 6 - Enforcement

Once the Public Open Space has been transferred to the relevant management organisation, concerns or complaints regarding the long-term management of the Public Open Space should be referred to the management organisations in the first instance as it is their responsibility to maintain the Public Open Space in accordance with the approved LMP.

It is the management organisation who are responsible for dealing with all ongoing maintenance and whom residents have a contractual agreement with. The planning enforcement team at HDC

should only be contacted if there is a serious breach of planning control, for example the non-compliance of a planning condition that is having a **serious significant impact** on the immediate area and/or residential amenity.